GIR/primary-production-partnership-intro -

Primary Production Industry Partnership – issue register

This issues register, originally published on our main website, provides guidance on issues identified during past consultation with industry participants.

Issues in this register that are a public ruling can now be found in the *Public Rulings* section of this Legal Database.

Issues in this register that have not been labelled as public rulings, constitute written guidance. We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information on these issues and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest. If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel that the guidance in this issues register does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

Introduction

For GST, Luxury Car Tax and Wine Equalisation Tax purposes, from 1 July 2015, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

Agency

1.1 Agents

Issue Number	Issue	Updated
1.1.1	Do the provisions of subdivision 153-B of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) (dealing with arrangements under which intermediaries are treated as suppliers or acquirers) require you to treat all supplies or acquisitions made through an agent as separate supplies or acquisitions to or from that agent, or is there some choice?	22/09/00
1.1.2	Where an agent acts as a Principal under Subdivision 153-B of the GST Act, does the agent collect and remit GST?	20/11/00
1.1.3	Does an agent have to include this in their GST turnover threshold?	20/11/00
1.1.4	Agents charge their clients for bank charges incurred by the agent in operating the agents' business bank account. Is this a financial supply or is this part of the overhead costs of an enterprise being conducted by an agent?	20/11/00
1.1.5	How does the GST law in relation to tax invoices apply to situations involving agents?	28/03/13
1.1.6	When an agent pays a spotters fee to another agent is this subject to GST?	20/11/00

1.1.7	Where a 'bulk billing' entity operates as an agent for a selling agent what are the GST implications?	28/03/13
1.1.8	Agents charge their clients for Financial Institutions Duty (FID) incurred by the agent in operating the agents' business bank account. Is this a financial supply or is this part of the overhead costs of an enterprise being conducted by an agent?	18/12/00
1.1.9	Where an agent acts on behalf of transport carriers (that is, livestock or timber carriers) what are the GST implications?	27/03/01
1.1.10	An agent sells goods for a vendor at an auction on the basis that the vendor is not registered for GST, however after the sale the vendor informs the agent that they are registered for GST. What are the GST implications?	15/06/01

1.2 Del Credere

Issue Number	Issue	Updated
1.2.1	With reference to attribution rules, is there any difference in the GST treatment between supplies made through 'agents' and supplies made through a Del Credere agency arrangement?	02/08/00
1.2.2	Del Credere Agency - GST implications of payment default by purchaser	15/08/02

Crops

2.1 Apples

Issue Number	Issue	Updated
2.1.1	What is the GST treatment in relation to the packaging of food in the following circumstances; a farmer grows apples, and has them bagged by a third party. The farmer pays for this service then sells the bagged apples at the market?	09/04/01

2.2 Cotton

2.3 Levies

Issue Number	Issue	Updated
2.3.1	Are commonwealth grain levies (of a kind described in the explanation below) that are not subject to GST by virtue of Division 81 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) deducted from the value or the price of the product?	18/12/00

2.4 Potatoes

Issue Number	Issue	Updated
2.4.1	Are seed potatoes 'food' for GST purposes?	02/08/00

2.5 Pulses

Issue Number	Issue	Updated
2.5.1	At what point do pulses, for example, peas, chick peas, mung beans and lupins, become food for the purposes of the GST Act?	09/04/01

2.6 Sugar cane

Issue Number	Issue	Updated
2.6.1	Which entity is the entity making a taxable supply of sugar cane in the following situation: Where the sugar cane assignment holder (A) provides the land and sugar assignment to a related business entity (B) by virtue of a written agreement, lease or contract and that related entity then produces and sells cane to the mill. The related business entity is neither subcontracted by the assignment holder nor acts as agent of the holder.	22/09/00
2.6.2	What are the GST implications where the sugar cane assignment holder, under a sharefarming agreement, receives the proceeds of sale and pays 85% to a share farmer who pays all operating and harvesting costs.	22/09/00
2.6.3	At what point in the production/distribution chain does the status of sugar cane change from a taxable supply to a GST-free supply of food?	22/09/00
2.6.4	CPA Issues Which entity is making the taxable supply of cane to the mill for the purposes of A New Tax System (Goods and Services Tax) Act 1999 (GST Act)?	26/07/02

2.7 Tea and coffee

Issue Number	Issue	Updated
2.7.1	At what point does green tea become GST-free?	20/11/00
2.7.2	Are coffee beans and green tea subject to GST?	02/08/00

2.8 Wheat

Issue Number	Issue	Updated
2.8.1	Whether supplies of wheat made by growers prior to 1 July 2000 (and for which considerations received on or after 1 July 2000) is subject to GST?	22/09/00

2.9 Unharvested crops

Issue Number	Issue	Updated
2.9.1	Where one entity owns farming land and another entity operates a farming business on that land, are any unharvested crops, which are included in the sale of such land, GST-free under section 38-480 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act).	02/08/00

2.9.2	Does a business operator own annual crops growing on a land owners land when the business operator pays all the expenses for the crops?	27/03/01
2.9.5	When a farm is sold, are crops owned by the business operator sold by the land owner as agent for the business operator?	27/03/01

2.10 Marketing boards

Issue Number	Issue	Updated
2.10.1	Will a loan provided by a subsidiary of a grain marketing organisation to grain suppliers (growers) upon delivery of grain to a grain marketing organisation, constitute 'consideration' in regard to the supply of grain for the purposes of the GST legislation?	22/09/00
2.10.2	Will a loan provided by a subsidiary of a grain marketing organisation to grain suppliers (growers) upon delivery of grain to the grain marketing organisation, constitute a 'financial supply' for the purposes of the GST legislation?	22/09/00

2.11 Packaging

Issue Number	Issue	Updated
2.11.1	What is the GST treatment in relation to the packaging of food in the following circumstances; a farmer grow apples, and has them bagged by a third party. The farmer pays for this service then sells the bagged apples at the market?	09/04/01

2.20 Sundry

Issue Number	Issue	Updated
2.20.1	Are raw/unprocessed olives GST-free as food for human consumption?	18/03/02

Dairy

3.1 Deregulation

Issue Number	Issue	Updated
3.1.1	Will dairy farmers be liable for GST on payments made under the Dairy Structural Adjustment Program and the Dairy Exit Program?	02/08/00

3.2 Levies

Issue Number	Issue	Updated
3.2.1	Are the intermediate entities making taxable supplies in relation to the dairy adjustment levy (DAL) collected for Commonwealth Department of Agriculture, Fisheries, and Forestry – Australia (AFFA)? Are the intermediate entities required to show the DAL collected at G1 and G11 of their business activity statement (BAS)?	18/12/00

	Is the levy amount considered to be ordinary income of the intermediaries and need to be included at T1 on their BAS?	

3.3 Milk

Issue Number	Issue	Updated
3.3.1	Is unprocessed cow's milk subject to GST?	02/08/00
3.3.2	Are the supplies of excess unprocessed milk between dairy manufacturers taxable?	18/12/00
3.3.3	Are the acquisitions of the milk creditable acquisitions?	18/12/00
3.3.4	What would the value of the milk be?	18/12/00
3.3.5	When does the GST liability and input tax credit entitlement occur when a manufacturer accounts on a non-cash basis?	18/12/00

Invoices

4.1 Agents

Issue Number	Issue	Updated
4.1.1	Can an agent for a recipient (buyer) issue recipient created tax invoices (RCTIs)?	28/03/13
4.1.3	Dealing through agents	26/07/02
4.1.4	What does a tax invoice which is issued by an agent on behalf of the vendor, have to contain to satisfy the provisions of the GST legislation?	28/03/13
4.1.5	Where you are the agent for two parties (for example a farmer and a livestock carrier) who transact with each other through you and you charge each party a commission for your services, what are the tax invoice requirements?	28/03/13

4.3 Model tax invoice

Issue Number	Issue	Updated
4.3.1	What does a Tax Invoice have to contain to satisfy the provisions of the GST legislation?	28/03/13

4.4 Recipient created tax invoices (RCTI)

Issue Number	Issue	Updated
4.4.1	Can recipients of supplies of wild game issue recipient created tax invoices (RCTI)?	28/03/013
4.4.2	What form should an agreement to issue a recipient created tax invoice (RCTI) take?	22/09/00
4.4.4	What does a recipient created tax invoice have to contain to satisfy the provisions of the GST legislation?	26/07/02
4.4.5	RCTI's and co-ops and marketing boards.	18/03/02

4.5 Tax invoices

Issue Number	Issue	Updated
4.5.1	Is it permissible to use a tax invoice when only GST-free supplies are made?	22/09/00
4.5.2	Can a monthly statement from a supplier satisfy tax invoice requirements?	26/07/02
4.5.3	Can a tax invoice be copied?	28/03/13
4.5.4	Where two or more GST registered enterprises make a creditable acquisition jointly, how does each enterprise claim their share of any input tax credit entitlement where there is only one tax invoice issued by the supplier?	16/02/01

4.6 Stock and station agents

Issue Number	Issue	Updated
4.6.1	(A) Stock and station agents traditionally send account sales documentation to their vendors advising of the amounts fetched on livestock or produce sold on their behalf, and also advising of expenses. Can the ATO comment on the GST requirements for the different parts of this documentation, and also provide an example of the documentation?	26/07/02
4.6.2	(B) Stock and station agents have been advised that for GST they must separate vendor expenses into expenses merely paid for by the agent on the vendor's behalf, and actual professional charges by the agent, such as commission. What guidance is available from the ATO on this and what will be the repercussions if an agent misclassifies a selling service item as an expense paid on behalf of the vendor, or vice versa?	26/07/02

4.7 Adjustment note

Issue Number	Issue	Updated
4.7.1	Can the recipient of a supply issue an adjustment note?	28/03/13

Joint ventures

5.1 Commercial fishing

Issue Number	Issue	Updated	Issue History
5.1.1	How do Commercial Fishing arrangements apply to GST Joint Ventures?	26/10/04	View history: GST joint ventures and taxable supplies

Land

6.1 Crown land

Issue Number	Issue	Updated
6.1.1	Second lease of crown land – GST status Where a piece of crown land is leased for a second time will the supply of the second lease be exempt from GST under section 38-445 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)?	24/10/03
6.1.2	Sale of a farm with an area under licence What are the GST consequences on the sale of a farm that includes an area under licence from the crown or a third party?	24/10/03

6.2 Farm land

Issue Number	Issue	Updated
6.2.1(a)	Sale of farmland – Section 38-480 of the GST Act How does section 38-480 of A New Tax System (Goods and Services Tax) Act 1999 (GST Act) apply to supplies of farmland?	24/10/03
6.2.1(b)	Sale of farm land - farm business v farmed continuously Is the sale of farm land GST-free if a farming business has been carried on for five years but the land has not been farmed continuously during the five years preceding the sale?	24/10/03
6.2.2	Farmed for five years but not immediately prior to the sale. Is the sale of farm land GST-free if a farming business has been carried on for five years but not for the five years immediately prior to the sale?	24/10/03
6.2.3	Sale of farm land — temporary cessation of farming activity. Is the sale of farm land GST-free if a farming business has been carried on for five years immediately prior to the sale, except for a break which occurs as a consequence of sale?	24/10/03
6.2.4	Documentary evidence – farming business What, if any, documentary evidence is necessary to show that the intention of a purchaser of farm land is that the farm land is to be used to carry on a farming business?	24/10/03
6.2.5	Acquisition GST free – no farming business What are the GST consequences if the purchaser acquires farm land GST-free but does not actually carry out a farming business?	24/10/03
6.2.6(a)	Intent When farmland is purchased GST-free, is a time limit imposed upon the recipient to commence the carrying on of a farming business?	24/10/03
6.2.6(b)	Exemption for supplies of farm land under section 38-480 of the GST Act. Does exemption for supplies of farm land under section 38-480 of the GST Act depend upon the period of time that a purchaser intends that a farming business be carried out on the land?	24/10/03

6.2.7	Resale of farm land If a person has purchased farm land GST-free, how long does the land have to be used to carry on a farming business before it can be resold GST-free?	24/10/03
6.2.8	Sale of farm land to son/daughter This section has been moved to 6.6.1 - GST and inter family transactions	24/10/03
6.2.9	Sale of farmland - transitional This question relates to a transitional issue that was more relevant at the outset of GST. The answer is displayed here for reference purposes.	24/10/03
6.2.10	Sale of moveable chattels Where a contract for the sale of farm land includes plant in the form of a chattel, would the chattel be considered a separate supply and subject to GST?	24/10/03
6.2.12	Security deposits and land sales Where a security deposit is paid on part of a land sale contract, when does the liability arise? The agreement is that the deposit may be forfeited if the purchaser does not complete the contract.	24/10/03

6.2.13 Leases to associates

Issue Number	Issue	Updated
6.2.13(a)	Is a land owner who allows a related entity to conduct a farm business on the land required to register for the purposes of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)?	24/10/03
6.2.13(b)	Where farms are leased to associates, (for example, a retired farmer allows his son to continue the farm business without a formal lease in return for income support) will it be a taxable supply and will the associate provisions of the GST Act deem a market value of consideration.	24/10/03
6.2.14	Increasing Adjustment under Division 135 of the GST Act Does the recipient of a supply that is GST-free under section 38-480 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) have to make an increasing adjustment under Division 135 of the GST Act if the use of the land is converted from: the conduct of a farming business to the conduct of another enterprise in the course or furtherance of which supplies are made that are either taxable or GST-free?	24/10/03
6.2.15	Increasing adjustment under Division 129 of the GST Act Can there be an increasing adjustment under Division 129 of the A New Tax System (Goods and Services Tax) Act 1999, if the use of the farmland purchased GST free under section 38-480 of the GST Act is different from the intended use when it was purchased?	24/10/03

6.2.17 Ownership of crops before harvest – growing crops

Issue Number	Issue	Updated
6.2.17(a)	Do growing crops form part of the land in or on which they are growing?	24/10/03

6.2.17(b)	What are the GST implications when land on which there are growing crops is sold in circumstances which would satisfy the provisions of section 38-480 of the GST Act?	24/10/03
6.2.19	Inputs tax credits in relation to uncleared bushland section In operating a farming business, is a farmer entitled to input tax credits in relation to expenditure incurred on uncleared bushland sections of his farmland?	24/10/03
6.2.20	GST-free Farm Land and Costs Incurred When farmland is sold GST-free, how are the costs incurred in the sale treated for GST purposes?	24/10/03
6.2.21	Farm land set aside for conservation covenants A farmer registered for GST enters into a covenant, or other agreement, for part of the farmer's land to be set aside for conservation purposes. The farmer receives money, or other consideration, for supplying the land and the rights to the land. Is the supply subject to GST?	24/10/03
6.2.22	Farm Land – related entity This section has been moved to 6.2.13(a) – Leases to Associates	24/10/03
6.2.23	Sales of farmland – Section 38-480 of the GST Act This section has been moved to 6.2.1(a) - Farm Land	24/10/03

6.3 Leases

Issue Number	Issue	Updated
6.3.1	Definition of Long Term Lease Does the reference to long-term lease in section 38-475 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) and section 38-480 of the GST Act (the farmland provisions), cover pastoral and other leases granted by Commonwealth, State or Territory governments in circumstances where those leases are granted for a period of less than 50 years but are either renewable, or can be converted to perpetual leases or freehold title?	24/10/03
6.3.2	Section 38-450 of the GST Act and Short Term Leases When will a short-term lease of land by the Commonwealth, a State or a Territory be GST-free under section 38-450 of the A New Tax System (Goods and Services) Act 1999 (GST Act)?	24/10/03
6.3.3	Farm Land and Terminated Leases Prior to Sale Can section 38-480 of the A New Tax System (Goods and Services Tax) Act 1999 (the GST Act) apply to the sale of farmland where the land has been previously leased as a farm, and where the lease has terminated prior to the sale. From the time of termination of the lease to the sale of the farmland, no farming business has been carried on, on the land. The purchaser of the freehold farmland intends to carry on a farming business on the land.	24/10/03
6.3.4	Interpretation of the definition of long-term lease Will the requirement for the supply of a long-term lease to be for at least 50 years as described in section 195 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act), be met where a lease with an original term in excess of 50 years is assigned part way through the original term and the time remaining until the cessation of the lease is less than 50 years?	24/10/03

6.4 Residency

Issue Number	Issue	Updated
6.4.1	This issue was withdrawn 30 May 2002.	24/10/03

6.5 Fixtures and fittings

Issue Number	Issue	Updated
6.5.1	Tenants fixtures This issue has been removed. Please refer to issue 6.5.2.	24/10/03
6.5.2	Tenants fixtures What are the GST consequences when a tenant attaches a fixture to farmland?	24/10/03

6.6 GST and inter family transactions

Issue Number	Issue	Updated
6.6.1	Sale of farmland to son/daughter How does GST apply where I sell my farm land to my son/daughter, assuming the following: The final consideration is determined, Payments are periodical and spread over time (with payments able to be changed from time to time), Property passes at the earlier of the full amount being paid, or upon death, it being bequeathed pursuant to the will.	24/10/03
6.6.2	Enterprise, landowner and related entity Is a landowner who allows a related entity to conduct a farm business on the land carrying on an enterprise for the purposes of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)?	24/10/03

6.6.3 GST and Inter Family Transactions

Issue Number	Issue	Updated
6.6.3(a)	The landowner leases farmland to the business operator for no consideration. The landowner is not registered for GST. The business operator is registered for GST. Is the landowner required to be registered?	24/10/03
6.6.3(b)	The landowner leases farmland to the business operator for no consideration. The landowner is not registered for GST. The business operator is registered for GST. Is the supply of land taxable?	24/10/03
6.6.4	The landowner and the business operator are registered for GST. The landowner leases farmland to the business operator for $75,000. (i) Is there a taxable supply of land from the landowner to the business operator? (ii) Can the landowner and the business operator group?	24/10/03

6.6.5	The landowner and the business operator are registered for GST. The landowner leases farmland to the business operator for no consideration. Is there a taxable supply by the landowner?	24/10/03

Livestock

7.1 Cattle

7.2 Game

Issue Number	Issue	Updated
7.2.1	Will the supply of game carcasses from a harvester to a wild game processor be subject to GST?	26/07/02

7.3 Horses

7.4 Levies

Issue Number	Issue	Updated
7.4.1	What is the correct treatment in relation to GST and the deduction of livestock transaction levies?	18/12/00
7.4.2	Will Rural Lands Protection Board (RLPB) rates that apply on the basis of the number of stock carried on farms be GST free?	22/09/00

7.5 Sales

Issue Number	Issue	Updated
7.5.1	How does GST apply to livestock, game and carcass sales?	22/09/00

7.20 Sundry

Issue Number	Issue	Updated
7.20.1	What is the GST treatment on the importation of frozen/fresh animal semen?	27/03/01
7.20.2	This issue was withdrawn on the 1 August 2002 What are the GST implications when livestock are transferred by an entity registered for GST using an election under section 70-100 of the Income Tax Assessment Act 1997 (the ITAA 97)?	01/08/02

Seafood/fishing

8.1 Fishing

Issue Number	Issue	Updated	Issue History
8.1.1	What are the elements required under GST to sell a fishing business as a going concern?	26/10/04	View history: seafood

			and fishing
8.1.2	What are the special claiming arrangements for commercial fishing under the Energy Grants Credit Scheme?	26/10/04	NA

8.2 Seafood

Issue Number	Issue	Updated
8.2.1	Are live fish (for example, Banded Morwong and Wrasse) which are sold for domestic consumption considered to be food for GST purposes and hence GST-free?	26/10/04
8.2.2	Are supplies of oyster spat and adult oysters GST -free?	26/10/04

Timber

9.1 Acquisitions

Issue Number	Issue	Updated
9.1.1	Are the supplies of timber between forestry companies taxable?	26/10/04
9.1.2	Are the acquisitions of the timber creditable acquisitions?	26/10/04
9.1.3	What would the value of the timber be?	26/10/04
9.1.4	When does the GST liability and input tax credit entitlement occur when a forestry company accounts on a non-cash basis?	26/10/04

9.2 Registration

Issue Number	Issue	Updated
9.2.1	Where a supplier is unregistered, are the following disregarded for the purposes of section 188-25 of the GST Act in determining whether a supplier has a GST turnover which meets the registration threshold:- The sale to a single purchaser of: • land with standing timber on the land at time of sale; • land together with already felled timber; • grazing permits?	26/10/04

Wool and shearing

10.1 Shearing

Issue Number	Issue	Updated
10.1.1	Does the contractor's tax invoice need to show cost of shearing and GST separately where shearing is undertaken on a full contract basis?	28/03/13

10.1.2	How is the GST liability calculated on a 'cost plus' basis shearing contract?	22/09/00
10.1.3	Is the employer liable for GST on the labour component of a 'cocky shearing' arrangement?	22/09/00
10.1.4	Is the contractor liable for GST on fees charged to woolgrowers under a 'levy shearing' arrangement?	22/09/00
10.1.5	Does GST apply on supplies of meals or accommodation to shearers by their employers?	22/09/00

10.2 Wool

Issue Number	Issue	Updated
10.2.1	Wool is being sold at auction towards the end of June 2000. Will GST apply if payment is not made until after 30 June?	09/04/01
10.2.2	How is GST calculated when wool tax is imposed on the same transaction?	02/08/00

Government grants and payments

11 Grants – rewritten and amended 9/01/01

11.1 Grants

Issue Number	Issue	Updated	Issue History
11.1.1	How will grants be treated under GST?	26/10/04	View history

11.2 Government relief payments

Issue Number	Issue	Updated
11.2.1	Government relief payments for destruction of crops etc due to disasters Will government relief payments associated with the destruction of livestock, crops, etc., due to disasters, for example, bushfire, flood, oil spill, etc., be subject to GST?	26/10/04
11.2.2	PAYG treatment of income from forced disposal of livestock. For PAYG purposes how is the income from the forced disposal of livestock treated?	26/10/04

11.3 Dairy

Issue Number	Issue	Updated
11.3.1	Dairy Industry Restructuring Compensation Package	26/10/04

	Will dairy farmers be liable for GST on payments made under the Dairy Structural Adjustment Program (DSAP) and the Dairy Exit Program (DEP)?	
11.3.2	Income Tax effect of Dairy Structural Adjustment Program (DSAP) What is the Income Tax effect of the Dairy Structural Adjustment Program (DSAP)?	26/10/04
11.3.3	Dairy Deregulation – Capital Loss on Quotas (a) (i) What happens to the quotas once the regulations are removed? (a) (ii) After deregulation by the States quotas will no longer exist. Does this mean that they have zero value and holders can realise a capital loss? (b) (i) Do quotas have to be sold to realise any capital loss? (b) (ii) Is the capital loss attributable to the 1999/2000 income year or the 2000/2001 income year? (c) (i) Do State Governments actually have to resume the quotas at 'nil' value for a capital loss to exist? (c) (ii) Is such a capital loss allowable for taxation purposes?	26/10/04

11.4 Flood relief

Issue Number	Issue	Updated
11.4.1	Flood package and GST – income support Are the payments of income support and existing debt interest rate subsidies from the Federal Government Flood Package to farmers subject to GST?	26/10/04
11.4.2	Flood Package and GST - reimbursement grants for small business and crop replanting Are the payments of reimbursement grants for small business and crop replanting from the Federal Government flood package to farmers subject to GST?	26/10/04

11.5 Farm help

Issue Number	Issue	Updated
11.5.1	GST on Farm Help Payments Will farmers be liable for GST on payments made under the Farm Help Income Support (formerly Restart Income Support) and the Farm Help Re-establishment Grant Scheme (formerly Restart Re-establishment Grant)?	26/10/04
11.5.2	Farm Help/ Farm Restart Scheme (PAYG & Income Tax) 1. Income support payment	26/10/04

	1.1 Will the Farm Help income support payment be assessable income to the recipient? 1.2 Is the Farm Help income support payment included in the instalment income of the recipient for PAYG instalments purposes? 1.3 Will the beneficiary rebate apply to the Farm Help income support payments? 1.4 Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA97 - Long-term averaging of primary producers' tax liability? 2. Re-establishment grant 2.1 Will the Farm Help re-establishment grant be assessable income to the recipient? 2.2 Will there be Capital Gains Tax implications on the receipt of the Farm Help re-establishment grant? 2.3 Is the Farm Help re-establishment grant included in the instalment income of the recipient for PAYG instalments purposes?	
11.5.3	Exceptional Circumstances Relief Payments	26/10/04

11.6 Landcare

Issue Number	Issue	Updated
11.6.1	Can a number of small landcare groups get together as one large group and apply for one ABN?	26/10/04
11.6.2	If a landcare entity receives a grant of just over $75,000 a year, does the entity have to register for the GST?	26/10/04
11.6.3	If a landcare entity's turnover is below the GST registration threshold, and it chooses not to register for GST, does the landcare entity still need an ABN?	26/10/04
11.6.4	If a landcare entity makes arrangements for another organisation (for example, local council) to be the designated funding manager, does that landcare entity need to have an ABN and/or register for the GST?	26/10/04
11.6.5	Will not for profit Landcare groups be able to claim back any GST they pay on goods such as fencing?	26/10/04
11.6.6	What are the GST consequences of the following events: A grant is paid under an agreement for the period 1 July 1999 to 30 June 2000 The agreement stipulates that any monies that remain unspent as at 30 June 2000 must be refunded to the government unless alternative arrangements are made, and Agreement is reached whereby the grantee will be able to spend the excess funds in the 2001 financial year.	26/10/04

11.6.7	What are the GST implications where a landholder provides services to the entity and receives payment in return?	26/10/04
11.6.8	What are the Pay As You Go (PAYG) Withholding tax requirements where the landcare entity does not quote an ABN to the payer of grant monies?	26/10/04
11.6.9	What are the Pay As You Go (PAYG) Withholding tax requirements where a landholder does not quote an ABN to the landcare entity?	26/10/04
11.6.10	What can the entity do if it has inadequate accounting systems, and cannot afford to update them?	26/10/04
11.6.11	Is a landcare group entitled to obtain an ABN?	26/10/04

11.7 Under and over passes

Issue Number	Issue	Updated
11.7.1	Reimbursement grant from RIDF – GST status Is the payment of a reimbursement grant from the Victorian Rural Infrastructure Development Fund (RIDF) to farmers for the completion of a stock under/overpass subject to GST?	26/10/04
Note	This information has not been updated to take into account the Sugar Industry Reform Program 2004 that was announced by the Prime Minister, the Hon John Howard MP, on the 29 April 2004.	26/10/04

11.8 Sugar

Issue Number	Issue	Updated
11.8.1	Sugar Industry Assistance Package – GST treatment Are payments to canegrowers under the Sugar Industry Assistance Package subject to GST?	26/10/04
11.8.2	Sugar Industry Assistance Package - BAS issues Should payments made to sugar cane farmers under the Interest Rate Subsidy scheme, which is part of the Sugar Industry Assistance Package, be included at G1 on the farmer's business activity statement (BAS)?	26/10/04
11.8.3	Sugar Industry Assistance Package – income tax and PAYG questions: Interest Rate Subsidy (on loans used for planting cane crops) Interest Rate Subsidy (loans associated with the business of producing cane) Income Support Payment Vouchers to access financial counselling services	26/10/04

Water, sewerage and sullage

12.1 Water

Issue Number	Issue	Updated	Issue History
12.1.1	What is the GST treatment of irrigation water, irrigation licences, and farmers who buy and sell water rights between each other.	26/10/04	View history: Water, sewerage and sullage

12.2 Sewerage

Issue Number	Issue	Updated	Issue History
12.2.1	What is the GST treatment of sewerage and sewerage-like services (for example, night cans, sullage tanks, and bio-systems)?	26/10/04	View history: Water, sewerage and sullage

Partnerships and associated entities

13.1 Partnerships

Issue Number	Issue	Updated	Issue History
13.1.1	Can a partnership have access to input tax credits without reimbursement of partners?	26/10/04	View history: Partnerships and associated entities

13.2 Associated entities

Issue Number	Issue	Updated
13.2.1	Does a taxable supply occur when a property is made available by one family member to another to operate as a farming business; for example, by a parent (landowner) to a partnership of son and daughter-in-law (operating entity). This arrangement involves the operating entity paying all the costs associated with holding the property (such as rates and taxes) in lieu of paying rent to the landowner? If the rates and taxes exceed $75,000 per annum, will this make any difference to the outcome? Where the amount payable is less than $75,000 would the landowner require an ABN to avoid the operating entity withholding 46.5% of the rates for PAYG withholding?	26/10/04
13.2.2	Does a taxable supply occur when a Primary Production business, formerly operated by a partnership and now operated by a trust, pays a hire fee to the partnership for use of plant. The original partnership is still in existence but its only 'activity' is the ownership of the plant that is used by the trust. The hire fee is usually equal to tax depreciation relating to assets owned by the partnership?	26/10/04

	If the partnership has no ABN, does the no ABN withholding rule apply?	

13.5 Estates

Issue Number	Issue	Updated	Issue History
13.5.1	This issue has been relocated to Issue 20 - Sundry.	18/02/04	View history: Partnerships and associated entities

13.10 Death

Issue Number	Issue	Updated
13.10.1	This issue has been relocated to Issue 20 - Sundry.	18/02/04

Non business use

14.1 Apportionment

Issue Number	Issue	Updated
14.1.1	What is the correct basis for apportionment of expenses such as electricity and insurance?	09/04/01

14.2 Reimbursement

Issue Number	Issue	Updated
14.2.1	Is an entity registered for GST entitled to claim an input tax credit for motor vehicle expenses that are incurred by way of reimbursement to an employee, where the reimbursement is calculated on a cents per kilometre basis?	09/04/01
14.2.2	How can a non-profit organisation, that is not a charitable institution, trustee of a charitable fund, a gift deductible entity or a government school claim input tax credits for reimbursing volunteers?	04/10/01

14.3 Personal use

Issue Number	Issue	Updated
14.3.1	How does a farmer account for GST paid on bulk fuel if the fuel is used by more than one vehicle for both business and personal use?	22/09/00
14.3.2	This issue was withdrawn on the 30 August 2002 What are the GST implications where primary produce is used or consumed by the producer?	30/08/02

Registration

15.1 Registration

Issue Number	Issue	Updated	Issue History
15.1.1	This question has been moved to Issue 9 – timber For further information on registration issues please refer to the registration menu of GST essentials.	26/10/04	View history: Registrations

Farming

16.1 Carrying on

Issue Number	Issue	Updated	Issue History
16.1.1	This issue has been removed. Please refer to issue 13.2.1 Is a land owner who allows a related entity to conduct a farm business on the land carrying on an enterprise for the purposes of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)?	27/03/01	History of issue 16.1.1
16.1.2	Is the provision of agistment a farming business?	15/08/02	

Going concerns

17.1 Going concerns

Issue Number	Issue
17.1.1	Can the entity proceed and treat the supply as a supply of a going concern and therefore GST-free, on the basis there was originally an intention to supply everything necessary for the continued operation of the enterprise? Can the entity proceed to supply its enterprise as a going concern if it is first able to remedy the loss of the asset, for example, by (a) leasing another boat, (b) repairing the damaged boat, or (c) purchasing another boat?

Wine equalisation tax (WET)

Issue Number	Issue	Updated
18.1.1	Is there a rebate system for cellar door and mail order sales?	14/10/02
18.1.2	What is the Wine Equalisation Tax?	14/10/02
18.1.3	To what beverages does the WET apply?	14/10/02
18.1.4	Who pays the WET?	14/10/02
18.1.5	How are exports of wine treated?	14/10/02
18.1.6	How is the WET applied?	14/10/02

18.1.7	What happens if I sell to a distributor who then sells to a retailer?	14/10/02
18.1.8	Who administers the WET?	14/10/02
18.1.9	Who needs to register for WET?	14/10/02
18.1.10	Is there an exemption from WET based on my level of sales?	14/10/02
18.1.11	How do I calculate the WET on my wholesale sales?	14/10/02

Sundry

20.1. Cash back payments

Issue Number	Issue	Updated	Issue History
20.1.1	What are the GST implications of a cash back payment offered by a supplier to a farmer?	27/03/01	

20.2 Schools

Issue Number	Issue	Updated	Issue History
20.2.1	What components of boarding school fees are GST-free, and what components are not? This goes right down to food supplied for home economics classes, etc.	07/08/02	History of issue 20.2.1
20.2.2	Is food supplied by boarding schools subject to GST?	22/09/00	Not applicable

20.3 Penalties

Issue Number	Issue	Updated
20.3.1	Who is responsible for late lodgment penalties where a taxpayer lodges a GST return through a tax agent and the return is lodged late because the taxpayer did not get their records to the tax agent on time?	09/04/01
20.3.2	Who is responsible for late lodgment penalties where a taxpayer lodges a GST return through a tax agent and the return is lodged late due to the tax agent?	09/04/01

20.4 Food

Issue Number	Issue	Updated
20.4.1	Are products that can be consumed as 'food' but also have other uses, considered to be food?	27/03/01
20.4.2	How are rotten fruit and vegetables defined in relation to food?	13/11/02
20.4.3	How are rotten grapes defined in relation to food?	13/11/02

20.5 Deposits

Issue Number	Issue	Updated
20.5.1	Where a commitment to purchase equipment is made and a security deposit is paid, when does the GST liability in relation to the sale arise? The agreement is that the deposit may be forfeited if the customer does not complete the purchase	22/09/00

20.6 In kind

Issue Number	Issue	Updated
20.6.1	Do payments in kind represent two supplies in the following situation? Taxpayer 1 grows a grain crop on Taxpayer 2's property. In return for the use of Taxpayer 2's property, Taxpayer 1 gives him a percentage of his grain crop which Taxpayer 2 sells at a later date. Both taxpayers are registered for GST.	07/08/02

20.7 Prizes

Issue Number	Issue	Updated
20.7.1	What are the GST implications for payment of prize money by agricultural show societies?	04/07/00

20.8 Employees

Issue Number	Issue	Updated	Issue History
20.8.1	Does GST apply on supplies by employers to jackaroos, jillaroos, station hands and similar employees of (a) food and drink, or (b) accommodation?	07/08/02	History of issue 20.8.1

20.9 Financial arrangements

Issue Number	Issue	Updated	Issue History
20.9.1	Is primary produce (for example, wool or cotton) traded through the futures market, subject to GST when a) the futures contracts are created; or b) only when there is a physical delivery of produce?	07/08/02	History of issue 20.9.1
20.9.2	Hire Purchase and GST	26/10/12	

20.10 ATO Rulings

Issue Number	Issue	Updated
20.10.1	Can an industry organisation request a Goods and services tax class Ruling on behalf of its members?	15/08/02

1 Agency

1.1 Agents

1.1.1 - GST and agency

Question

Do the provisions of Subdivision 153-B of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) (dealing with arrangements under which intermediaries are treated as suppliers or acquirers) require you to treat all supplies or acquisitions made through an agent as separate supplies or acquisitions to or from that agent, or is there some choice?

Non-interpretative – straight application of the law

Answer

In order that supplies and/or acquisitions made through an agent can be treated as separate supplies to the agent or separate acquisitions from the agent, there must be a written agreement with the agent. The agreement must specify the kinds of supplies and/or acquisitions to which the agreement applies. If you do not wish to treat all kinds of supplies and/or acquisitions as being covered by the agreement, you should not specify those kinds of supply or acquisition in the agreement.

Explanation

The ability to specify particular kinds of supplies and/or acquisitions in the written agreement with the agent effectively allows a choice. For example, you could agree that only supplies and acquisitions of livestock were to be covered by the agreement. If this were the case, supplies and acquisitions through the agent of things other than livestock would not be treated as separate supplies and acquisitions to or from the agent.

The agreement could, for example, also specify that it only applied to supplies (or supplies of a particular kind) through the agent. In this case, all acquisitions (or supplies of some other kind) through the agent would not be treated as separate acquisitions or supplies from or to the agent.

If you make supplies and/or acquisitions through a number of agents, you may choose to enter into written agreements with only some of the agents and the kinds of supplies and/or acquisitions specified in each of those agreements do not have to be the same.

Also, where a written agreement specifies a particular kind or kinds of supply, but in relation to a particular supply of that kind you issue a tax invoice or adjustment note to the third party (recipient) in your own name, this overrides the agreement in relation to the particular supply.

You should note that the way in which you complete your business activity statements will be different depending upon whether or not your supplies and acquisitions are covered by agreements with your agents. The application of the attribution rules will also vary depending on whether particular transactions are covered by the agreements. This may also have an effect on the amounts included in your business activity statements for particular tax periods.

Subdivision 153-B has been amended to allow entities that facilitate the supplies or acquisitions of an enterprise carried on by another entity through acting as an

intermediary to use Subdivision 153-B, irrespective of whether the intermediary can legally bind the principal by their acts. Billing and paying agents, among others, would be able to access these accounting procedures. The amendments will apply to supplies and acquisitions made by intermediaries on or after 1 July 2010.

1.1.2 - Agent acts as a Principal under Subdivision 153-B.

Question

Where an agent acts as a principal under Subdivision 153-B of the GST Act, does the agent collect and remit GST?

Non-interpretative – straight application of the law

Answer

Yes.

Explanation

Section 153-50 of the GST Act provides that entities may enter into an arrangement under which an intermediary will be treated as a separate supplier and/or acquirer. That is, the intermediary will be treated as a principal in its own right.

To enter this arrangement there must be a written agreement under which:

- the intermediary arranges to make supplies and/or acquisitions to or from third parties on behalf of the principal
- the kinds of supplies and/or acquisitions to which the arrangement applies are specified
- the intermediary is treated for the purposes of GST law as a principal in making supplies or acquisitions
- the intermediary will issue all tax invoices and adjustment notes relating to those supplies to third parties in the intermediary's name and the principal will not issue such documents
- both parties must be registered.

The effect of entering into these arrangements is that the principal and the intermediary treat the supply of goods or services that the principal makes to third parties through the intermediary as two separate supplies, and that they are treated as acting between themselves as principal to principal for GST purposes.

A taxable supply made to a third party is taken to be a taxable supply made by the intermediary. In addition, the principal is taken to have made a taxable supply to the intermediary.

1.1.3 – Agent's GST turnover threshold

Question

Does an agent have to include this in their GST turnover threshold?

For the source of the ATO view, refer to paragraph 95 of GSTR 2000/37 **-** *Goods and services tax: agency relationships and the application of the law***.**

Answer

No.

Explanation

Paragraph 95 of GSTR 2000/37 provides:

> Section 188-24 allows an intermediary the option of calculating their turnover as if the arrangement was not entered into. If the intermediary chooses not to use this basis of calculation, their turnover is calculated by using the value of the supplies they are taken to make under the arrangement as per sections 153-55 and 153-60.

Where the option available under section 188-24, of the GST Act, is exercised, provided the value of the taxable supply you make as an intermediary is the same amount as the creditable acquisition you make as an intermediary. The net effect will be nil.

1.1.4 - Agents bank charges that are charged to clients

Question

Agents charge their clients for bank charges incurred by the agent in operating the agents' business bank account. Is this a financial supply or is this part of the overhead costs of an enterprise being conducted by an agent?

Non-interpretative – straight application of the law

Answer

These are part of the overhead costs of operating an enterprise which are usually incorporated into the commission charged to the client.

Explanation

Recovery of bank charges.

Agents who on-charge bank charges to their clients are not making a financial supply of the bank charges; they are merely passing this cost on. The supply from the bank to the agent will be a financial supply and will be input taxed (Subdivision 40-A of the A New Tax System (Goods and Services Tax) Act 1999 as well as Division 40 of the A New Tax System (Goods and Services Tax) Regulations 2019). If the agent then chooses to pass this cost on to the client then this will form part of the cost of services provided. It is not a financial supply by the agent.

However, where the agent charges interest on overdue accounts, this will be a financial supply by the agent and will be input taxed. If agents make financial supplies themselves, they need to be aware of the special rules that apply to the making of financial supplies.

1.1.5 - Dealing through agents

Question

How does the GST law in relation to tax invoices apply to situations involving agents?

For the source of the ATO view, refer to:

- GSTR 2013/1 – *Goods and services tax: tax invoices*
- GSTR 2000/10 – *Goods and services tax: recipient created tax invoices.*

Answer

Under the GST legislation, input tax credits cannot be claimed for creditable acquisitions with a GST exclusive value of more than $75 unless you hold a tax invoice.

Subsection 29-70(1) of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) sets out the information which a document must contain in order for it to be accepted as a tax invoice. All tax invoices must contain enough information to enable the identity and the ABN of the supplier to be clearly ascertained. If the GST inclusive amount payable for the supply or supplies to which a tax invoice relates is $1,000 or more, the tax invoice must also contain enough information to enable the identity or ABN of the recipient to be clearly ascertained.

The legislation also contains special rules in relation to agents (Division 153 of the GST Act). These rules enable you to claim input tax credits if either you or your agent holds a tax invoice. The rules also enable agents to issue tax invoices for supplies made on your behalf - but you and your agent must not both issue separate tax invoices for the same supply.

When you issue a tax invoice for a taxable supply, it must contain enough information to enable your identity or ABN to be clearly ascertained. If the GST inclusive amount payable for the supply or supplies to which the tax invoice relates is $1,000 or more, the tax invoice also needs to contain sufficient information to enable the identity or ABN of the recipient to be clearly ascertained.

When your agent issues a tax invoice for a taxable supply made on your behalf, it must contain sufficient information to enable your identity and ABN to be clearly ascertained. If the GST inclusive amount payable for the supply or supplies to which the tax invoice relates is $1,000 or more, the tax invoice also needs to contain sufficient information to enable the identity or ABN of the recipient to be clearly ascertained.

If you make creditable acquisitions through an agent, any tax invoice issued by the supplier or his or her agent, can be held by you or your agent if you have one. Any tax invoice held by you or your agent will need to contain sufficient information to enable your identity or ABN to be clearly ascertained.

There may be circumstances where a document contains the identity and/or ABN of the agent instead of the supplier's or recipient's identity and/or ABN. In this case, the document is not a valid tax invoice.

The Commissioner has made a determination under subsection 29-10(3) of the GST Act to waive the requirement in certain circumstances for a recipient to hold a tax invoice when attributing an input tax credit to a tax period. This instrument has a date of effect of 1 July 2010. See A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions Under an Agency Relationship) Legislative Instrument 2013 for further details.

Recipient created tax invoices (RCTI)

The GST legislation also provides for recipients of taxable supplies to issue tax invoices in relation to those supplies. One common class of tax invoices which may be issued by recipients relates to supplies of agricultural products where the recipient determines the value of the supply subsequent to the supply taking place.

The information required on an RCTI is essentially the same as that for a normal tax invoice for supplies the GST inclusive amount payable for which is $1,000 or more and must also include the identity or ABN of the recipient.

If you make supplies through an agent for which the recipient issues a tax invoice, the RCTI held by you or your agent will need to contain sufficient information to enable the identity or ABN of the recipient, and your identity and ABN to be clearly ascertained.

Additional information on tax invoices

Where an agent issues a tax invoice for his or her own services to a principal, the normal information requirements exist, that is, it must contain sufficient information to enable the identity and ABN of the agent (the supplier of the agency services) and, if the GST inclusive amount of the supplies to which the tax invoice relates is $1,000 or more, the identity or ABN of the recipient (the principal) to be clearly ascertained. However, there is no prohibition in relation to other **additional information** relevant to the agency arrangement being included on the tax invoice. Such additional information may include details of the supply made on behalf of the principal or the fact that an RCTI has been received from a purchaser and a reproduction of the details of that RCTI.

Examples of model tax invoices can be viewed at issues 4.3.1 (tax invoice), 4.1.4 (agent/vendor tax invoice) and 4.4.1 (recipient created tax invoice).

GST-free supplies

Where a GST-free supply is made by a farmer through an agent or to a farmer through the supplier's agent, either the supplier or their agent can issue an invoice. However, the invoice will not be a tax invoice because the supply is not a taxable supply.

Circumstances involving issuing invoices when only GST-free supplies are covered by the invoice are addressed at issue 4.5.1.

Agent as principal

Additionally the principal and an agent may agree in writing to treat supplies and acquisitions as though they were acting on a principal to principal basis.

Under these arrangements, the agent will be treated as making supplies to, or acquisitions from, the third party and the principal will be treated as making corresponding supplies to, or acquisitions from, the agent. In relation to supplies, the agent will issue tax invoices in the agent's own name to the third party and the principal will issue a tax invoice to the agent and not issue any tax invoice to the third party in relation to that supply. In relation to acquisitions, the agent will issue a tax invoice to the principal.

In calculating the value of supplies made by a principal to an agent, any amount payable by the agent to the principal in relation to the supply is taken to be reduced by the amount of any commission payable by the principal to the agent. The provision of services by the agent to the principal is taken not to be a taxable supply.

In calculating the value of supplies made by an agent to a principal, any amount payable by the principal to the agent in relation to the acquisition is taken to be increased by the amount of any commission payable by the principal to the agent. Again, the provision of services by the agent to the principal is taken not to be a taxable supply.

Where such arrangements are implemented, the options set out earlier about tax invoices issued by agents in relation to supplies made for principals will no longer be available, because the agent is taken to have made the supply in the agent's own name and will be solely responsible for issuing any tax invoices.

Additional information on this issue can be viewed at issue 1.1.1.

1.1.6 – Spotter's fee to another agent

Question

When an agent pays a spotters fee to another agent is this subject to GST?

Non-interpretative – straight application of the law

Answer

Yes.

Explanation

Where a selling agent pays a 1% 'rebate' to the buyer's agent for introducing his buyer to the selling agent, the payment of the 1% fee (which is in substance a 'spotters fee') by the selling agent to the buyers agent is a taxable supply, if both parties are registered for GST and all other provisions of section 9-5 of *the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* are met. The buyer's agent will be liable for GST on this transaction. The seller's agent will be able to claim an input tax credit (ITC) provided the provisions of Division 11 of the GST Act are met and he/she holds a valid tax invoice.

1.1.7 - 'Bulk billing' entities operates as an agent for a selling agent

Question

Where a 'bulk billing' entity operates as an agent for a selling agent what are the GST implications?

For the source of the ATO view, refer to:

- Paragraphs 95 to 97 of – *Goods and services tax: tax invoices*
- GSTR 2000/37 – *Goods and services tax: agency relationships and the application of the law.*

Answer

Division 153 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) has application between the selling agent and the bulk billing agent.

Explanation

Where an agency situation exists Division 153 of the GST Act has special rules about agents and tax invoices. It reflects the position at common law that a supply or acquisition your agent makes on your behalf is no different from one that you make yourself.

Under Subdivision 153-A of the GST Act a principal's GST obligations are complied with if your agent issues a tax invoice and adjustment notes on your behalf. Therefore the 'bulk billing' entity can issue tax invoices as an agent for the selling agent to livestock purchasers.

If you are unsure as to whether an agency situation exists, see Goods and Services Taxation Ruling GSTR 2000/37 – *Goods and services tax: agency relationships and the application of the law* which provides more information on this topic.

The services provided by the 'bulk billing' entity to the selling agent may be taxable supplies made to the selling agent.

For a supply to be taxable under section 9-5 of the GST Act the following requirements must be satisfied:

Section 9-5

You make a **taxable supply** if the following occurs:

- you make the supply for consideration
- (b) the supply is made in the course or furtherance of an enterprise that you carry on
- (c) the supply is connected with Australia
- (d) you are registered, or required to be registered.

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

If the 'bulk billing' entity is making taxable supplies to the selling agent the services provided will be subject to GST. The 'bulk billing' entity may need to provide a tax invoice to the selling agent for the services provided.

An example of where a 'bulk billing' entity operates as an agent for selling agent in a livestock scenario is as follows:

There are several regional livestock markets throughout the country where selling agents have contracted with 'bulk billing' entities, which carry out a number of services as agent for their member selling agents.

Each selling agent enters a written agreement with the entity. The agreement appoints the entity to act as an agent for the selling agent and for the entity to provide a number of services to the selling agent such as:

- providing labour to weigh and transport cattle
- bulk billing of livestock sales
- collection and remitting of payments from purchasers to vendors
- the provision of computer and software facilities to selling agents to conduct livestock sales etc.

1.1.8 - On charging Financial Institutions Duty

Question

Agents charge their clients for Financial Institutions Duty (FID) incurred by the agent in operating the agents' business bank account. Is this a financial supply or is this part of the overhead costs of an enterprise being conducted by an agent?

Non-interpretative – straight application of the law

Answer

These are not financial supplies but are part of the overhead costs of operating an enterprise, which are often incorporated into the commission charged to the client.

Explanation

Agents who on-charge FID charges to their clients are not making a financial supply of the FID charges; they are merely passing this cost on. The supply from the bank to the agent will be a financial supply and will be input taxed (Subdivision 40-A of the *A New Tax System (Goods and Services Tax) Act 1999* as well as Division 40 of the *A New Tax System (Goods and Services Tax) Regulations 2019*). If the agent then chooses to pass this cost on to the client then this will form part of the cost of services provided by the agent. It is not a financial supply by the agent.

However, where the agent charges interest on overdue accounts, this will be a financial supply by the agent and will be input taxed. If agents make financial supplies themselves, they need to be aware of the special rules that apply to the making of financial supplies.

For further information on bank charges, please refer to issue 1.1.4

1.1.9 - Transport carriers

Question

Where an agent acts on behalf of transport carriers (that is, livestock or timber carriers) what are the GST implications?

Non-interpretative –other references (see refer to GSTR 2000/37 - *Goods and services tax: agency relationships and the application of the law*)

Answer

The GST implications for agents in these types of industries are no different to any other industry where an agency relationship exists between the parties.

For detailed analyses of GST and agency relationships see Goods and Services Tax Ruling GSTR 2000/37 - Goods and services tax: agency relationships and the application of the law.

Explanation

Under the basic GST rules about tax invoices and adjustment notes, a tax invoice for a taxable supply or an adjustment note must be issued by a principal who makes supplies through an agent. However Subdivision 153-A of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) provides that the principal's obligations are complied with if the agent issues tax invoices and adjustment notes on behalf of the principal for those supplies made by the principal through the agent. Therefore either the principal or his agent (but not both), may issue a tax invoice to the recipient of a supply, see sections 153-15 and 153-20 of the GST Act respectively.

Where an agent acts on behalf of a principal, such as a livestock or timber carrier, the following GST consequences may flow:

- The carrier (principal) or his agent but not both, can issue a tax invoice to the owner of the product being the recipient of the carrier services.
- In addition if the agent charges the carrier a fee (which may be described as a collection fee, administration fee etc) for acting as the carrier's agent, this will be a supply of services by the agent to the carrier which will be subject to GST where all other requirements of section 9-5 of the GST Act are met.
- The agent will need to issue a tax invoice to the carrier for these services when requested, so long as no tax invoice has been issued by the principal.

The above situation can be contrasted with a scenario where an agent acts on behalf of a timber or livestock producer and organises transportation and other services on their behalf.

1.1.10 - Vendor initially not registered, post sale is registered

Non-interpretative – other references (see GSTR 2000/37 - *Goods and services tax: agency relationships and the application of the law*)

Question

An agent sells goods for a vendor at an auction on the basis that the vendor is not registered for GST, however, after the sale the vendor informs the agent that they are registered for GST. What are the GST implications?

Answer:

A GST registered vendor has a liability to remit 1/11th of the sale proceeds to the ATO irrespective of whether GST was stated to be included in the sale price.

Explanation:

For commercial law purposes, an agent is a person who is authorised, either expressly or by implication, by a principal, to act for that principal so as to create or affect legal relations between the principal and third parties. The principal is bound by the acts of an agent as a result of the authority given to the agent.

Pursuant to section 9-40 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) you must pay the GST payable on any taxable supply that you make.

When a GST registered vendor makes supplies through an agent which are subject to GST then the vendor has a liability to pay GST in relation to the sale proceeds regardless of whether GST was stated by the agent to be included in the sale price. The amount of GST payable is 1/11th of the consideration. (Please refer to section 9-75 of the GST Act, which is reproduced below.)

The purchaser of the goods may be entitled to an input tax credit if the supply of the goods is a creditable acquisition and the purchaser holds a valid tax invoice.

For further information on agency relationships, see Goods and Services Tax Ruling GSTR 2000/37 - Goods and services tax: agency relationships and the application of the law.

If further consideration is received from the purchaser in respect of the GST that may not have been included in the original price, this represents a change in the consideration for the supply and will be an adjustment event (paragraph 19-10(1)(b) of the GST Act).

GST of 1/11th of the extra consideration, will be payable by the supplier. The purchaser may be entitled to an input tax credit and would need to hold an adjustment note from either the vendor or the vendor's agent to do so.

Please note the following relevant provisions, which relate to adjustment notes.

A document is an adjustment note if it satisfies subsection 29-75 (1) of the GST Act, which provides that it:

(a) must be issued by the supplier of the taxable supply in the circumstances set out in subsection (2); and

(b) must set out the ABN of the entity that issues it; and

(c) must contain such other information as the Commissioner determines in writing; and

(d) must be in the approved form.

However, the Commissioner may treat as an adjustment note a particular document that is not an adjustment note.

The supplier of a taxable supply, as provided in subsection 29-75(2) of the GST Act, must:

- within 28 days after the recipient of the supply requests the supplier to give an adjustment note for the adjustment relating to the supply; or
- if the supplier has issued a tax invoice in relation to the supply (or the recipient has requested one) and the supplier becomes aware of the

adjustment before an adjustment note is requested - within 28 days after becoming aware of that fact;

give to the recipient an adjustment note for the adjustment, unless any tax invoice relating to the supply would have been a recipient created tax invoice (in which case it must be issued by the recipient).

Please find reproduced below section 9-75 of the GST Act, which relates to the amount of GST payable on taxable supplies.

Section 9-75 of the GST Act provides that:

> The amount of GST on a taxable supply is 10% of the value of the taxable supply.
>
> (1) The **value** of a taxable supply is as follows:
>
> Price × 10/11
>
> where:
>
> **price** is the sum of:
>
> - so far as the consideration for the supply is consideration expressed as an amount of money - the amount (without any discount for the amount of GST (if any) payable on the supply); and
> - so far as the consideration is not consideration expressed as an amount of money - the GST inclusive market value of that consideration.

1.2 Del Credere

1.2.1 - Del Credere agency arrangements

Question

With reference to attribution rules, is there any difference in the GST treatment between supplies made through 'agents' and supplies made through a Del Credere agency arrangement?

For the source the of ATO view refer to:

- GSTR 2000/37 – *Goods and services tax: agency relationships and the application of the law*
- GSTR 2000/29 - *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25*

Answer:

No

Explanation:

The difference between vendors making supplies through a normal agent as compared with making supplies through a 'Del Credere' agent, is that in the latter situation, the vendor will receive payment for supplies (by virtue of the Del Credere Agreement) even where the recipient has not made payment within the required period set down in the sale contract.

Assumption

The following answer has been made on the basis that a vendor receives payment from a del credere agent prior to the time when the vendor knows that:

- any consideration has been received by the agent from a purchaser; or
- the invoice has been issued by the agent for a supply made by the agent on the vendor's behalf.

It is also based on the assumption that the agent makes payment for the full consideration under the Del Credere Agreement rather than part payment in relation to a supply.

Similar circumstances are covered in paragraph 87 and 88 of Goods and Services Tax Ruling *GSTR 2000/29 Goods and Services Tax: attributing GST payable, input tax credits and adjustments*, which covers the situation where the vendor relies on his agent for information about when a supply occurs.

Please also refer to . Because the vendor is unaware of when a supply is made on his behalf by the agent, the normal attribution rules vary so that in the case of a vendor operating on a:

Cash basis:

The vendor attributes GST to the tax period or periods in which the vendor becomes aware that consideration for the supply has been received, but only to the extent of the consideration that the vendor becomes aware of.

Non-cash basis:

- the vendor attributes GST to the earlier of:
- the tax period in which the vendor becomes aware that any of the consideration for the supply has been received; or
- the tax period in which the vendor becomes aware that an invoice relating to the supply has been issued.

However, the above variation in the attribution rules, should not be misinterpreted to suggest that a vendor doesn't have a GST liability upon receiving payments from his agent, because he is unable to determine the identity of the recipients to which those payments relate, at that particular instance. In other words, the vendor becomes aware that consideration has been received by the agent for supplies by virtue of having received payments from the agent.

Payments made by an agent under a Del Credere Agreement, are consideration in the hands of the vendor; even though the agent may not have received payment from the recipient (refer subsections 9-15(1) and (2) of the GST Act).

Where a vendor who is reliant on the agent for information about the supply, and receives Del Credere payments, GST should be attributed to the tax period for the following bases:

Cash basis: the tax period in which payment is received by the vendor from the agent.

This accords with the basic attribution rule in that the payment be accounted for when it is received by the vendor as consideration; and simultaneously

It accords with subclause 3(2) of A New Tax System (Goods and Services Tax) (Particular Attribution Rules for Supplies and Acquisitions made through Agents) Determination (No. 1) 2000 in that the time of receipt of payment from the agent is

the tax period in which the vendor becomes aware that any of the consideration for a supply has been received

Non-cash basis: the tax period in which any of the consideration is received.

This is in accordance with subclause 3(1) of A New Tax System (Goods and Services Tax) (Particular Attribution Rules for Supplies and Acquisitions made through Agents) Determination (No. 1) 2000 in that it is the first instance at which the vendor becomes aware that:

- any of the consideration for the supply has been received; or
- an invoice relating to the supply has issued (leading to the response of payment by the recipient).

1.2.2 - Del Credere Agency - GST implications of payment default by purchaser

For the source of the ATO view refer to GSTR 2000/37 – GSTR 2000/37 *Goods and services tax: agency relationships and the application of the law.*

Question

An agent sells livestock, produce, or other taxable goods on behalf of a GST registered principal ('the vendor') to a recipient of the goods ('the purchaser'). The agent charges the vendor a particular rate of commission for the totality of the selling services. The agent operates on a 'del credere' basis – that is guarantees the vendor will be paid, even in a situation where the purchaser defaults on payment and it is not feasible to recover the goods. **What are the GST implications for the vendor, agent, and purchaser in the case of such a default by the purchaser, where the sale cannot be cancelled?**

Answer

The agent has paid the purchase monies to the vendor, as they are obliged to under the del credere basis of the agency, but has found it impossible to recover the monies from the purchaser. The sale has not been reversed or cancelled and the purchaser retains possession of the items sold.

The relevant GST implications for the various parties are as follows:

- the **vendor**, having received the purchase monies, remains liable for the GST on the taxable supply of the items
- the **purchaser**, having not paid for the items, loses any entitlement to an input tax credit on the acquisition of the items, and
- the **agent**, has no GST consequences – that is, they are neither liable for a taxable supply of the goods, nor entitled to an input tax credit. The agent remains liable for the GST included in the commission.

Explanation

References to the GST Act are references to *A New Tax System (Goods and Services Tax) Act 1999*.

Background

In an ordinary case of a sale through a stock and station agent, the livestock, produce or other goods change hands and payment is made by the purchaser. The agent passes on this payment to the vendor, after deducting commission and other particular costs.

In many settings, for example an auction, the standard conditions of sale may preclude a purchaser from collecting the items until payment is made.

However, instances arise, particularly with established purchasers, where the agent will allow the purchaser to receive the items, before the tendering of payment. Also, where payment is made by cheque, the cheque may be dishonoured and subsequent recovery may prove impossible – for example, the purchaser has unexpectedly become insolvent.

Where these difficulties arise, the vendor is frequently protected by way of a standard 'del credere' guarantee by the agent to forward payment to the vendor, despite the payment default. The guarantee is not always evidenced in writing if it is the norm for the industry. What is referred to as a 'guarantee' is actually an indemnity under which the del credere agent assumes primary liability for the obligation of the purchaser.

As the instances of default are relatively rare, the portion of a commission the agent charges attributable to covering these situations is usually quite small – if it is capable of identification at all. Many agents will not quote a non 'del credere' rate of commission, as vendors expect the agent to operate on the 'del credere' basis as the norm for the industry. Some agents take out insurance to cover the risk of these occasional losses.

Del credere guarantee often merely an incidental component of the commission charged

In the situations described above, the part of the commission charged to the vendor for the del credere undertaking or indemnity will generally be small, sometimes difficult to quantify, and will normally be merely incidental to the supply of agency services.

Under the GST regulations relating to financial supplies, the giving of an indemnity that has the character of the one given by the del credere agent, will ordinarily be a financial supply and input taxed. However, where the giving of an indemnity is a minor incidental component to taxable agency services, the whole of the agency services should be treated as taxable. The dominant nature of the supply is taxable and the part that might be input taxed is so small and incidental that it is subsumed into the dominant nature of the supply. (This is explained further at paragraphs 91 to 93 of GSTR 2002/2 - *Goods and services tax: GST treatment of financial supplies and related supplies and acquisitions*.)

Hence in the ordinary case of a taxable supply of agency services using a commission rate that includes a small incidental component corresponding to a del credere guarantee, both the supplier of the selling services (the agent) and the client receiving those services can treat the whole of the commission as taxable.

Situation A - Del credere agent unaware of default at the time sale proceeds are paid

In practice, a del credere agent may routinely pass on sale proceeds to a vendor without establishing whether or not the purchaser has actually paid, or whether, if a payment has been made by cheque, the cheque has been honoured. It may take some time before it becomes apparent to the del credere agent that the purchaser is unable to pay.

Situation B - Del credere agent aware of default before sending sale proceeds

In other instances, the agent will be specifically aware that payment has not been made by the purchaser, or that a default appears likely, but will nevertheless pass on the sale proceeds, being aware that this is an obligation under the del credere arrangement.

The vendor

In either situation A or B above, the vendor receives the payment as consideration for the taxable supply of items to the purchaser, whether this consideration takes the form of sale proceeds paid by the actual purchaser, or sale proceeds paid by the agent under the del credere guarantee. Under subsection 9-15(2) of the GST Act, consideration for a taxable supply need not be provided by the recipient of the supply, but can come from third parties. Hence the vendor need not be concerned with the success or otherwise of the agent in recovering the debt for the sale, as the vendor has been paid in full. The GST liability of the vendor remains unchanged (that is, continues to include the GST included in the price of the goods supplied), despite failure of the purchaser to pay.

The purchaser

Cash basis

If the purchaser is on a cash basis, the entitlement to claim an input tax credit on a creditable acquisition is dependent on whether the purchaser has actually paid. If no payment is made there can be no claim for an input tax credit. This is governed by the GST Act provisions relating to attribution, in particular subsection 29-10(2). It is a requirement that the consideration be provided by the recipient.

In the del credere situation of purchaser default described above, the purchaser has not paid and is thus not entitled to claim any input tax credit in their Business activity statement. The fact that the agent has made a payment to the vendor under the del credere guarantee (indemnity) is irrelevant to the purchaser. The purchaser did not appoint the agent to be their guarantor. Although there has been a transfer of the right to sue for the debt from the vendor to the vendor's agent, the debt remains unpaid from the purchaser's perspective.

Other than cash basis (accruals)

Where the purchaser operates on the other than cash basis, it is not necessary for payment to have been made for an input tax credit to be claimed in the purchaser's Business activity statement. The tax invoice issued by the agent for the vendor (or by the vendor entity itself) at the time of the sale will be enough for the purchaser to claim an input tax credit on a creditable acquisition. This arises from the operation of GST Act paragraph 29-10(1)(b).

However, where the purchaser fails to pay, the provisions of section 21-15 of the GST Act are relevant. This section requires an increasing adjustment for a purchaser, not operating on a cash basis, where the debt is overdue for 12 months or more, or where the debt has been written off.

It is considered that although the vendor may have been paid an amount by the agent, pursuant to the del credere arrangement between the vendor and the agent, this does not stop the operation of Division 21 in relation to the purchaser. In particular, there is still a debt that is unpaid, even though the debt is now owed to the agent suing in its own name rather than to the vendor. The debt is in relation to the original supply of goods to the purchaser. That debt remains unpaid from the purchaser's perspective.

The agent

The agent facilitates the supply of taxable goods by the vendor to the purchaser. The agent is faced with a business risk that occasionally a purchaser will not pay and the goods cannot economically be recovered. The agent having previously undertaken to indemnify the vendor for the sale, by way of the del credere guarantee, cannot ask the vendor to accept the loss. It is the agent's loss. Some agents take out insurance to cover this risk.

The transaction, from the viewpoint of the GST law, is a taxable supply of goods from the vendor to the purchaser, through the agent as a facilitator of the transaction. The funds supplied by the agent to the vendor do not represent the purchase by the agent of anything – rather they are part and parcel of the agent's business obligations to make this payment, regardless of whether or not the purchaser pays. That is, they are payments under the indemnity.

The point may be reached where the agent regards the debt as irrecoverable. Because the agent has not made a taxable supply of the goods, a write-off by the agent has no GST implications for the agent. Section 21-5 of the GST Act, which provides for decreasing adjustments where a supplier has had to write off a debt; or where the debt is overdue for 12 months or more, is only applicable to taxable supplies. It has no application to the agent. The entity making the taxable supply of the goods is the vendor, not the agent. The agent is not liable to remit the GST liability on the taxable supply – rather that liability remains with the vendor.

2 Crops

2.1 Apples

2.1.1 - Apple packaging

Question

What is the GST treatment in relation to the packaging of food in the following circumstances a farmer grow apples, and has them bagged by a third party. The farmer pays for this service then sells the bagged apples at the market?

For the source of the ATO view, refer to - *Goods and Services Tax: when is the supply of food packaging GST-free in terms of section 38-6 of the A New Tax System (Goods and Services Tax) Act 1999?*

Answer

The bagging service is a taxable supply as per section 9-5 and paragraph 9-10 (2)(b) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

In relation to the sale of the bagged apples, the apples will be GST-free as per section 38-2 of the GST Act. In addition it is considered that in most cases the packaging of the apples will be GST-free as per section 38-6 of the GST Act as the packaging will usually be necessary and normal. Paragraph 1 and 2 of Goods and Services Tax Determination GSTD 2000/6 discusses this.

Explanation

Section 38-6 of the GST Act states:

> 'Packaging of food'
>
> - A supply of packaging in which food is supplied is GST-free if the supply of the food is GST-free.
> - However, the supply of the packaging is GST-free under this section only to the extent that the packaging:
>   - is necessary for the supply of the food; and
>   - (b) is packaging of a kind in which food of that kind is normally supplied.'

It is considered, in most cases, that the packaging component of bagged apples will be intended to contain, promote or protect the apples. Consequently such packaging will be GST-free.

The issue of packaging for food is considered in GSTD 2000/6 - *Goods and Services Tax: when is the supply of food packaging GST-free in terms of section 38-6 of the A New Tax System (Goods and Services Tax) Act 1999?*

2.2 Cotton

2.3 Levies

2.3.1 - Commonwealth grain levies

Question

Are commonwealth grain levies (of a kind described in the explanation below) that are not subject to GST by virtue of Division 81 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) deducted from the value or the price of the product?

Non-interpretative – straight application of the law – calculation issue only

Answer

These levies are calculated on the value of the product. They are then deducted from the price of the product. The price is GST-inclusive.

Explanation

Ordinarily, the purchaser deducts the amount of the levy from amounts payable to the grower and forwards this amount on the grower's behalf to the levying agency.

Example - Grain levy of 1%

Value of product	$100
GST payable	$10
Total	$110
Less levy (1% of $100)	$1
The amount payable to the grower.	$109

In the example above, the grower will be liable to remit $10 to the Australian Taxation Office leaving them with a balance of $99. This would put the grower in the same position with respect to payment of the levy as they would have been prior to the introduction of the GST. The purchaser on making a creditable acquisition may be entitled to an input tax credit of $10.

2.4 Potatoes

2.4.1 - Seed potatoes

Question

Are seed potatoes 'food' for GST purposes?

For the source of the ATO view, refer to the Detailed food list.

Answer

Seed potatoes are normally subject to GST as they are not food for human consumption pursuant to paragraph 38-4(1)(a) of the *A New Tax System (Goods and*

Services Tax) Act 1999 (GST Act). However, where the grower determines that the seed potatoes be supplied to the market as food, the supply will be GST-free.

Explanation

This decision is made on the basis of information provided by industry that seed potatoes are generally used to grow potato crops. Seed potatoes are sold as certified seed potatoes. They are potatoes that are grown under special conditions to ensure they are disease free and have a high purity level. A certified seed crop is differentiated from other potato crops in that it has followed a system of management protocols and crop health checks determined by the certification authority. When harvested, the potatoes are visually no different from any other potatoes of the same variety, but they are able to be labelled as certified seed and generally attract a premium price if sold for seed purposes.

Section 38-2 of the GST Act states that a supply of food is GST-free. The meaning of food is contained in section 38-4 of the GST Act and includes food for human consumption. As seed potatoes are used to grow potato crops, they are not considered to be food for human consumption.

Information from industry indicates that seed potatoes are sold as food for human consumption when the grower can obtain a good price for the potatoes. At the time the farmer decides to sell the seed potatoes as food rather than for the purpose of growing crops, the potatoes are food for human consumption pursuant to paragraph 38-4(1)(a) of the GST Act and this sale will be GST-free.

Example

> *A farmer sells certified seed potatoes to another farmer to use to grow potato crops. As the seed potatoes are for the purpose of growing potato crops, they are not food for human consumption.*

Example

> *A seed potato grower sells some of his seed potatoes to the local fish and chip shop. The potatoes are sold as food for human consumption pursuant to paragraph 38-4(1)(a) of the GST Act and they will be GST-free in accordance with 38-2 of the GST Act.*

2.5 Pulses

2.5.1 - At what point do pulses become food for the purposes of the GST Act?

Question

At what point do pulses, for example peas, chick peas, mung beans and lupins, become food for the purposes of the GST Act?

For the source of the ATO view, refer to GSTB 2001/1 - *Pulses supplied as food for human consumption*.

Answer

A supply of food is, subject to certain exceptions, GST-free.

Pulses are the hard, dried, edible seeds of leguminous plants such as field peas, lentils, chick peas, soya beans, mung beans and faba beans.

Only machine dressed pulses supplied as food for human consumption will be treated as food under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

The fresh (not dried) produce of leguminous plants, such as garden peas or beans will be treated as food under the GST Act provided they are supplied as food for human consumption.

Similarly, bean, pea or mung beans that have been sprouted and are sold fresh for immediate consumption are food under the GST Act if they are supplied as food for human consumption.

Explanation:

To be considered food for GST purposes, the definition of food in the GST Act must be satisfied.

The GST Act defines 'food' to mean:

- food for human consumption
- ingredients for food for human consumption
- beverages for human consumption
- ingredients for beverages for human consumption
- goods to be mixed with or added to food for human consumption
- fats and oils marketed for culinary purposes.

If a supply of something is not for human consumption, it is not food. Even though produce may be supplied for human consumption there are exclusions from the definition of food that may also need to be considered. These exclusions can prevent produce from meeting the definition of food.

For pulses, the relevant definition is:

> 'any grain, cereal or sugar cane that has not been subject to any process or treatment resulting in an alteration of its form, nature or condition.'

The word 'grain' is not defined in the GST act and therefore takes it ordinary meaning. Although 'grain' most commonly implies the edible seeds of cereal, it can also apply to other hard seeds, such as sunflower seeds, linseed, rapseed (canola) and dried pulses. It is common practice in the industry for pulse growers to call themselves grain growers and to refer to pulses as pulse grains. Government departments and peak bodies also commonly treat pulses as grain and treat pulse growers as grain growers.

For the purposes of the GST Act the ATO interprets the term 'grain' to include dried pulses.

As pulses are grains for GST purposes, they are not considered food unless they have been subjected to a process or treatment that has altered their form, nature or condition.

Machine dressing is a process that alters pulses' condition. Farm dressing, by contrast is part of the harvesting process. Pulses that are merely farm dressed have not been subjected to a process or treatment that has altered their form, nature or condition and are therefore not considered food for human consumption.

Accordingly, pulses supplied for human consumption that have been machine dressed are food for the purposes of the GST Act.

For further details please refer to - *Pulses supplied as food for human consumption*.

2.6 Sugar cane

2.6.1 - Cane assignments

Question

Which entity is the entity making a taxable supply of sugar cane in the following situation: the sugar cane assignment holder (A) provides the land and sugar assignment to a related business entity (B) by virtue of a written agreement, lease or contract and that related entity then produces and sells cane to the mill. The related business entity is neither subcontracted by the assignment holder nor acts as agent of the holder.

Non-interpretative – straight application of the law

Answer

In this situation, it is considered that it is the business entity (B) which sells the cane to the mill that is making the taxable supply to the mill (as unprocessed cane is not food), not the assignment holder (A).

Explanation

Only the entity that is entitled to the proceeds or legally incurs the expenses is liable for GST and can claim input tax credits for creditable acquisitions. The business entity (B) will need to apply for an ABN and register for GST if required to do so. It may also be possible for the cane assignment holder (A) to register for an ABN, provided that they meet the necessary requirements.

If the cane assignment holder (A) is registered or required to be registered for GST and provides the land and cane assignment to the business entity (B) by way of a lease or contract, the normal GST rules will apply, provided that the consideration is based on commercial rates. The cane assignment holder (A) will make a taxable supply to the business entity (B) and will be liable for GST on that transaction. The business entity (B) will entitled to claim input tax credits for any creditable acquisitions that it makes.

Where the cane assignment holder (A) is registered or required to be registered for GST and there is a written agreement, lease or contract under which there is no consideration payable or where the consideration is not based on commercial rates, it will be necessary to consider the application of Division 72 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

This Division ensures that supplies to, and acquisitions from, your associates without consideration are brought within the GST system, and that supplies to your associates for inadequate consideration are properly valued for GST purposes. Associate is a defined term in section 195-1 of the GST Act. It has the meaning given by section 318 of the *Income Tax Assessment Act 1936*.

It is important to note that Division 72 will only apply if the recipient of the supply is not entitled to a full input tax credit. The recipient will not be entitled to a full input tax credit where they are not registered or required to be registered or if the acquisition was not solely for a creditable purpose.

Additional information on this issue can be viewed at issue 2.6.3.

2.6.2 - Cane sharefarming

Question

What are the GST implications where the sugar cane assignment holder, under a sharefarming agreement, receives the proceeds of sale and pays 85% to a share farmer who pays all operating and harvesting costs.

Non-interpretative – straight application of the law

Answer

Sharefarming arrangements can be complex. Regardless of the complexity of the arrangement, the basic rule remains that only the person who is entitled to the proceeds or who legally incurs the expenses is liable to pay GST or claim an input tax credit. Accordingly, in the case of shared proceeds of sale, both parties would be liable to GST in proportion to their respective shares. Similarly, each party would be entitled to input tax credits based on the extent to which they were personally liable for the expenses. Where sharefarmers are carrying on separate enterprises for GST purposes and are registered or required to be registered, any transactions between the parties would be subject to GST.

Generally, because of the diversity of sharefarming arrangements each case will need to be decided on its own particular facts.

Explanation

Only the entity that is entitled to the proceeds or legally incurs the expenses is liable for GST and can claim input tax credits for creditable acquisitions.

The GST legislation is transaction based. It deals with supplies that take place between entities. In order to be able to determine the GST implications of sharefarming arrangements, it is necessary to identify the entities involved and the particular transactions that they undertake. Once this has been established, the parties will be subject to the normal GST rules that apply to the facts.

For additional information on this issue see issue 2.6.3.

2.6.3 - Sugar cane – GST-free status

Question

At what point in the production/distribution chain does the status of sugar cane change from a taxable supply to a GST-free supply of food?

Non-interpretative – straight application of the law

GST policy/law

The supply of food is GST-free. Food is a defined term and has the meaning given by section 38-4 of the GST Act. Sugar cane is specifically exempted from the definition of food, however, sugar is considered to be food.

Answer

The supply of sugar will be a taxable supply until the point in the production/distribution chain where it becomes either DC Raw (for domestic consumption) and/or refined sugar. DC Raw is raw sugar that has been refined to the stage where it is for direct human consumption. The product is produced and handled in ways consistent with being a food grade product and does not require further processing.

Sugar becomes GST-free as food when it leaves the refinery as it is sufficiently processed for human consumption. Any transactions prior to this will be taxable supplies.

2.6.4 - Sugar cane production area (CPA) issues

This issue is no longer relevant as the CPA system was abolished in 2005. The issue previously stated:

Question

Which entity is making the taxable supply of cane to the mill for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)?

Non-interpretative – straight application of the law

Background information

It is understood that the sugar industry in Queensland is governed by the *Sugar Industry Act 1999 (Qld)* (SIA). Under the provisions of the SIA, a person may hold an entitlement called a CPA (Cane Production Area). The CPA entitles a grower to enter into a supply agreement with a mill owner to supply cane grown on the CPA to the mill. The CPA is considered to be property and may be sold, leased, subleased or otherwise transferred, so long as certain formal requirements are satisfied.

It is further understood that it is accepted within the industry that the CPA holder may be a different entity from the entity which grows the sugar cane.

Answer

Given the diversity and complexity of the various arrangements that exist in the sugar industry, it is not possible to provide one answer which will satisfy all situations. Therefore, each case will have to be decided on its particular facts.

It is the responsibility of the entities involved to examine their existing arrangements and determine which entity is making the taxable supply of cane to the mill. This will be a question of fact. The supplier of the cane will need to apply for an ABN and, if required, register for GST. If this entity is different from the CPA holder, the supplier of the CPA – or right to use the CPA – may also be required to have an ABN and be registered for GST. The supply of the right to use the CPA would be a supply for the purposes of GST.

Where the entity making the taxable supply of cane to the mill quotes its ABN prior to any payment being made, this will be sufficient to avoid the application of the PAYG withholding provisions.

Generally, the mills are not responsible for ensuring that a supplier's quoted ABN is correct.

Possible scenarios

1. CPA holder provides land and CPA to a related entity

It is understood that it is common for CPA holders to provide land and/or the CPA to a related business entity which grows the cane and sells it to the mill. The payment for the cane goes to the business entity via a banking directive provided to the mill by the CPA holder. Under these arrangements it is understood that the business entity is neither a sub-contractor nor acts as an agent of the holder.

Where this type of arrangement occurs, it is considered that it is the business entity which makes the taxable supply of cane to the mill. The business entity should register for an ABN and provide that number to the mill in order to avoid the PAYG withholding provisions. Quotation must be made prior to any payments being made.

2. Transfer as per the SIA

Where the grower has transferred its entitlement to the CPA as per the requirements of the SIA, it is the transferee who will hold the CPA and be entitled to make supplies of cane to the mill. If this supply satisfies the requirements of a taxable supply, the CPA holder must return GST on the supply.

If the above is the case, the CPA holder should apply for an ABN and, if required, register for GST. The transferee should quote its ABN to the mill, before any payment is made, to avoid the application of the PAYG withholding provisions.

If a related entity is involved, the result may be similar to scenario 1 above.

3. Sharefarming

It is understood that some CPA holders enter into formal or informal sharefarming agreements with other entities. These entities can be either related or unrelated. Some agreements may provide that the business entity supplies cane to the CPA holder, who in turn makes a supply of cane to the mill. Other agreements may provide the right to the CPA to the other entity and it is that entity which makes the supply to the mill.

Regardless of the complexity of the arrangement, the basic rule is that only the entity that is entitled to supply the cane to the mill for the purposes of the GST Act will be liable to pay any GST and claim input tax credits in relation to the supply. Because of the diversity of sharefarming arrangements, each case will need to be decided on its own particular facts.

Again, all entities involved should examine their existing agreements to determine who is supplying cane to the mill. It is this entity which should quote its ABN to the mills before any payment is made, in order to avoid the application of the PAYG withholding provisions.

4. Lease

Where a CPA holder has entered into a lease with another entity, the parties should examine the lease documentation to determine who is entitled to supply the cane to the mill. It is that entity which makes the supply of cane to the mill and it will be liable for any GST payable. That entity will require an ABN and should quote it to the mill before any payment is made in order to avoid the application of the PAYG withholding provisions.

Conclusion

It is not possible to provide one answer that will cover all factual situations within the sugar industry. The scenarios discussed above are indicative only and if growers have any questions about their particular situation they should apply for a private ruling.

Cane growers must consider all of their arrangements and determine which entity is making the taxable supply of cane to the mill. This entity should apply for an ABN and register for GST if necessary.

Other issues to consider

Other related issues that require consideration include:

- The definition of enterprise as it relates to the CPA holder
- ABN issues
- Division 72 of the GST Act, and
- GST grouping.

(a) Definition of enterprise as it relates to the CPA holder

Regardless of the arrangements that the CPA holders have with other entities, they may still be considered to be carrying on an enterprise for the purposes of the GST Act. Section 9-20 of the GST Act provides the definition of enterprise. Subsection 9-20(1) of the GST Act states:

> An enterprise is an activity or series of activities done:
>
> - in the form of a business
> - in the form of an adventure or concern in the nature of trade
> - on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property.

Further guidelines about whether or not activities constitute the carrying on of an enterprise can be found in which deals with the meaning of carrying on an enterprise for the purposes of entitlement to an ABN.

Paragraph 150 of MT 2006/1 lists a number of activities or series of activities that would be considered to be an enterprise for the purpose of section 38 of the *A New Tax System (Australian Business Number) Act 1999* (ABN Act).

The CPA holder may be considered to be carrying on a business, depending on other activities they may undertake. Whether or not activities are considered to be carrying on a business has to be determined against the indicators of a business as established by case law. Taxation Ruling TR 97/11 provides guidance on the business indicators as they relate to primary production.

CPA holders should also consider whether they are carrying on activities in the form of a lease, licence or other grant of interest in property as both land, the CPA and right to use either are considered to be property. Paragraph 306 of MT 2006/1 says that an activity is 'regular' if it is repeated at reasonably proximate intervals and 'continuous' if there is no significant cessation or interruption to the activity. Whether an activity is repeated over time on a regular basis is a question of fact and degree.

If CPA holders consider that they are carrying on an enterprise then they will need to apply for an ABN and, if required, register for GST.

(b) ABN issues

As stated above, the mills are generally not responsible for ensuring that a supplier's quoted ABN is correct.

However, if there is reason to suspect that it might not be genuine or that it does not belong to the supplier who quoted it, they should make further enquiries. Circumstances that may alert them to the need to make further enquiries are:

- Wrong configuration: An ABN has 11 digits. An entity may quote a 14-digit number. This would be their ABN plus a GST branch registration number. An ABN does not have any letters.
- Sequential numbers, repeating numbers or unusual number patterns. You can check the mathematical validity of the number by referring to the fact sheet:
- The invoice details do not match the person you believed was supplying you or the type of supplies you are receiving.

If the ABN quoted on the invoice is not valid or the details do not match the supplier, the mill should withhold 46.5 per cent of any payment that it makes.

(c) Division 72 of the GST Act - associates

Where the supplier of the right to use the CPA is registered or required to be registered and provides the CPA to a related entity which is registered or required to be registered, the normal GST rules will need to be considered.

However, where the supplier of the right to use the CPA is registered or required to be registered and there is an agreement under which there is no consideration payable or where the consideration is not based on commercial rates, it will be necessary to consider the application of Division 72 of the GST Act where the supplier and recipient are associates. Associate is a defined term in section 195-1 of the GST Act. It has the meaning given by section 318 of the *Income Tax Assessment Act 1936*.

It is important to note that division 72 of the GST Act will only apply if the recipient of the supply is not entitled to a full input tax credit. The recipient will not be entitled to a full input tax credit where they are not registered, or required to be registered, or if the acquisition was not solely for a creditable purpose.

(d) Grouping provisions

Regulations are now in place to broaden the range of entities that can group under division 48 of the GST Act to include partnerships, trusts and individuals.

If cane growers' business structures are such that they meet the eligibility criteria, they will be able to form a GST group.

The regulations are intended to enable a broad range of entities to utilise the grouping provisions for partnerships and trusts. The changes will help many businesses reduce compliance costs by removing the need to charge GST and claim input tax credits, as well as create tax invoices for supplies between related entities.

The regulations are contained in division 48 of the A New Tax System (Goods and Services Tax) Regulations 2019 (regulations).

Who can group?

The following entities may group:

companies

- trusts
- partnerships
- non-profit organisations
- individuals.

Effect of GST grouping

The effect of grouping is:

- It allows certain entities to be treated as a single entity.
- One nominated member will be responsible for most GST liabilities – the nominated representative.
- One GST return is lodged for the group.
- Intra-group transactions are excluded from the GST system.

What are the membership requirements?

Section 48-10 of the GST Act sets out the membership requirements for a GST group. Each entity must:

- either be a company, partnership, trust or individual and fulfil the requirements specified in the regulations
- if the entity is a company, be a company of the same 90 per cent owned group as all the other members of the GST group are also all companies
- be registered
- have the same tax periods
- account for GST on the same basis
- not be a member of another GST group, and
- not have any branch registered under division 54 of the GST Act.

Are there any additional requirements?

Apart from the above, there are additional requirements for partnerships and trusts. They are as follows:

A. Specific criteria for partnership eligibility to GST group

Partnerships can also be part of a GST group. Partnerships cannot group with partnerships.

There are four types of rules determining whether a partnership can be a member of a GST group. If the partnership meets any of the rules it can group with the specific entity.

- The Partnership Owner Rule allows a partnership to GST group with a company who is a member of the GST group or proposed GST group if the partnership has a 90 per cent or more beneficial ownership in the company.
- The Partner Single Shareholder Rule allows a partnership to GST group with a single shareholder company where a partner in the partnership or a family member of the partner is the shareholder of the company.
- The Partners Multiple Shareholder Rule allows a partnership to GST group with a company with more than one shareholder where all of the shareholders are represented, either personally or by family members, by at least two partners of the partnership.
- The Trusts with Partners as Beneficiaries Rule allows a partnership to GST group with a trust that is a member of the GST group or proposed GST group if at least two partners are represented as beneficiaries

either personally or by a family members. The beneficiary may be a direct beneficiary of the trust or a beneficiary through one or more interposed trusts.

B. Specific criteria for trust eligibility to GST group

Trusts can also be part of a GST group. Trusts cannot GST group with trusts.

There are two rules determining whether a trust can be a member of a GST group. If the trust meets any of the rules it can group with the entity involved.

- The Trust Owner Rule allows a trust to GST group with a company who is a member of a GST group or a proposed GST group if the trust has at least a 90 per cent stake in a company.
- The second class of rules involves the status of beneficiaries. This class of rule allows the trustee of the trust to only distribute income or capital of the trust to a beneficiary that is a permitted beneficiary for the period that the trust wishes to GST group.

Who is a permitted beneficiary?

A permitted beneficiary may be a direct beneficiary or an indirect beneficiary through one or more interposed trusts. The different permitted beneficiaries are:

- a company that is a member of the GST group or proposed GST group (Beneficiary Owner Rule)
- the shareholder or a family member of that shareholder of a single shareholder company, that is a member of the GST group or proposed GST group (Beneficiary Single Shareholder Rule)
- at least two shareholders, or family of at least two shareholders, of a multiple shareholder company – that is a member of the GST group or proposed GST group (Beneficiary Multiple Shareholder Rule)
- at least two partners, or family members of at least two partners, of the partnership that is a member of the GST group or proposed GST group (Partnerships with Beneficiaries as Partners Rule)
- a charitable institution, a trustee of a charitable fund or a gift-deductible entity (Charities Rule), and
- an individual who is a member of the GST group (Individuals Rule).

Where a trust has only permitted beneficiaries receiving income or capital from the trust, it may group with another entity providing that entity meets its own grouping requirements. This means that non-permitted beneficiaries may still be beneficiaries of GST grouped trusts as long as they don't receive income or capital during the period the trust is GST grouped.

C. Specific criteria for individual eligibility to GST group

Individuals can also be part of a GST group. Individuals cannot GST group with individuals.

There are four rules determining whether an individual can be a member of a GST group. If the individual meets any of the rules it can group with the entity involved.

- The Individual Owner Rule allows an individual to GST group with a company who is a member of the GST group or proposed GST group if the individual has a 90 per cent or more beneficial ownership of the company.

- The Individual Multiple Membership Rule allows an individual to GST group with a company where one or more of the members of the company consist of either or both of the individual or family members of the individual.
- The Partnership Member Rule allows an individual to GST group with a partnership where either or both of the individual and family members of the individual comprise the partners in the partnership that is a member of a GST group.
- The Individual as a Beneficiary Rule allows an individual to GST group with a trust that is a member of a GST group or proposed GST group if either or both of the individual and family members of the individual are directly or indirectly beneficiaries of the trust, and the trustee of the trust distributes income or capital of the trust only to permitted beneficiaries.

What is 'family'?

'Family' of a partner, beneficiary or shareholder will be any parent, grandparent, brother, sister, nephew, niece, child or child of a child of either the individual or the individual's spouse. Family also includes the partner's spouse and the spouses of any person mentioned in the previous sentence.

2.7 Tea and coffee

2.7.1 - Green tea – GST-free status

Question

At what point does green tea become GST-free?

For the source of the ATO view, refer to the Detailed food list.

Answer

Green tea is GST-free as an ingredient for a beverage for human consumption once it has gone through the following processes as discussed below and is in a form that is ready for consumption. Beverages marketed in a ready to drink form such as iced tea and takeaway tea are taxable.

Explanation

A supply of food is GST-free pursuant to section 38-2 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). of the GST Act defines 'food' to include:

> '(c) beverages for human consumption;
>
> (d) ingredients for beverages for human consumption; ...'

Paragraph 38-3(1)(d) of the GST Act states that, food is not GST-free under if it is a supply of a beverage (or an ingredient for a beverage), other than a beverage (or ingredient) of a kind specified in the third column of the table in Clause 1 of Schedule 2.

Item 5 of Schedule 2 of the GST Act states:

'tea (including herbal tea, fruit tea, ginseng tea and other similar beverage preparations), coffee and coffee essence ...'

Item 7 of Schedule 2 of the GST Act states:

'preparations for drinking purposes that are marketed principally as tea preparations...'

How is green tea processed?

Information from industry is that green tea goes through the following processes after it is picked. Processing for green tea is different from processing for black tea. To make black tea, the fresh leaf is withered by exposure to air and is broken and left to ferment after picking.

For green tea, the leaf is not fermented at all. Instead, it is steamed and heated immediately after harvesting to stop the fermentation process. This softens the leaves for rolling and keeps the juices from oxidising. The steamed leaves are then rolled and dried, loosening the fibres, which brings out the flavour in the whole leaf. In the process of rolling the tea leaves become twisted. At first, the tea leaves are rolled coarsely and then are rolled more finely to give it a uniform twist. The water content is reduced to protect it from changes in quality.

Finally, the tea is sorted and the stems and dust are removed and the leaf shape and size are arranged before it is finished as tea that is in its final form as a preparation for a beverage. At this point, the green tea is GST-free as an ingredient for a beverage for human consumption.

However, this does not include beverages marketed in a ready-to-drink form (for example, iced tea and takeaway tea) as these types of beverages are specifically excluded by Clause 2 of Schedule 2 of the GST Act.

For further details please refer to Issue 25 of the Food Industry Partnership - issues register.

2.7.2 - Coffee beans – GST-free status

Question

Are coffee beans and green tea subject to GST?

For the source of the ATO view, refer to the Detailed food list.

Answer

A supply of food for human consumption is generally GST-free under section 38-2 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

Explanation

Section 38-4 of the GST Act defines food to include:

'(c) beverages for human consumption;

(d) ingredients for beverages for human consumption...'

Paragraph 38-3(1)(d) of the GST Act states that, food is not GST-free under section 38-2 of the GST Act if it is a supply of a beverage (or an ingredient for a beverage), other than a beverage (or ingredient) of a kind specified in the third column of the table in clause 1 of Schedule 2 of the GST Act.

Schedule 2 of the GST Act specifically lists the following ingredients for beverages as being GST-free:

Item 5:

> 'tea (including herbal tea, fruit tea, ginseng tea and other similar beverage preparations), coffee and coffee essence...'

Item 7:

> 'preparations for drinking purposes that are marketed principally as tea, coffee preparations...'

The ATO is of the view that both roasted and green coffee beans that are an ingredient for a beverage for human consumption will be GST-free in accordance with item 5 of Schedule 2 of the GST Act.

Green tea will be regarded as GST-free when it is in its final form as a preparation for a beverage. However, this does not include beverages marketed in a ready-to-drink form (for example, iced tea and takeaway tea).

For more details on coffee beans please refer to Issue 16 of the Food Industry Partnership - issues register.

For more details on green tea please refer to Issue 25 of the Food Industry Partnership - issues register.

2.8 Wheat

2.8.1 - Wheat sales - transitional

Question

Whether supplies of wheat made by growers prior to 1 July 2000 (and for which consideration is received on or after 1 July 2000) is subject to GST?

Non-interpretative – straight application of the law

Answer

No

Explanation

GST is payable on a **supply** to the extent that it is made on or after 1 July 2000 (subsection 7(1) of the A *New Tax System (Goods and Services Tax Transition) Act 1999* (Transition Act). By virtue of subsection 5(2) the term supply has the same meaning as contained in section 9-10 of *the A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

Under paragraph 9-10(2)(a) of the GST Act, a supply includes a supply of goods (in this instance, grain).

Section 6 of the Transition Act contains specific timing rules for determining when a supply is made for the purposes of the transitional arrangements. In particular, subsection 6(2) of the Transition Act covers the supply of goods. A supply occurs where grain is made available by grain growers for the Australian Wheat Board's use, (in most instances, this will occur where grain is delivered by grain growers to silos/depots of AWB (or their agent) and delivery of the grain is accepted by AWB).

Where supplies occur prior to 1 July 2000, no proportion of the grain is subject to GST by virtue of section 7 of the Transition Act.

2.9 Unharvested crops

2.9.1 - Ownership of crops before harvest

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

2.9.2 - Farm ownership and crops

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

For more information in relation to this please refer to issue 2.9.1.

2.9.5 - Sale of farm land and sale of crops

Question

When a farm is sold, are crops owned by the business operator sold by the land owner as agent for the business operator?

Non-interpretative –other references (see - *Goods and services tax: agency relationships and the application of the law*)

Answer

This will depend on the facts in each case.

Explanation

Where crops owned by a business operating entity are sold at the same time as a land owning entity sells the land on which the crops are growing, the business operator may be considered to be making a supply.

This supply could be between:

- the business operator and the purchaser direct,
- the business operator and the purchaser via the agency of the land owner, or
- the business operator and the land owner, with the land owner on-selling the crop to the purchaser.

The facts of each case will need to be examined in order to determine the parties to the transaction and their relationship to each other. Once this has been determined, normal GST rules can be applied to the transaction.

For more information on Agency see GSTR 2000/37 - *Agency relationships and the application of the law*.

2.10 Marketing boards

2.10.1 - Loan agreements between grain growers and marketing boards

Question

Will a loan provided by a subsidiary of a grain marketing organisation to grain suppliers (growers) upon delivery of grain to a grain marketing organisation, constitute 'consideration' in regard to the supply of grain for the purposes of the GST legislation?

Non-interpretative – straight application of the law

Answer

No

Explanation

A 'financial supply' is input taxed under section 40-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). The *A New Tax System (Goods and Services Tax) Regulations 2019* (Regulations) stipulate what supplies are financial supplies.

Where an agreement is entered into, which by the terms and conditions of the contract, has the character and substance of a commercial loan, then the agreement will be accepted as constituting a loan and not as 'consideration' for the purposes of the GST Act.

2.10.2 - Loan agreements between grain growers and marketing boards

Question

Will a loan provided by a subsidiary of a grain marketing organisation to grain suppliers (growers) upon delivery of grain to the grain marketing organisation, constitute a 'financial supply' for the purposes of the GST legislation?

Non-interpretative – straight application of the law

Answer

Yes

Explanation

A 'financial supply' is 'input taxed' under section 40-5 of the of *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). A loan which satisfies the requirements of Division 40 in *A New Tax System (Goods and Services Tax) Regulations 2019* ('GST Regulations'), is considered to be a financial supply.

Where a loan agreement is considered to be a 'financial supply' by virtue of Division 40 in the GST Regulations, then it is a financial supply for the purposes of the GST Act.

2.11 Packaging

2.11.1 - Apple packaging

Question

What is the GST treatment in relation to the packaging of food in the following circumstances; a farmer grow apples, and has them bagged by a third party. The farmer pays for this service then sells the bagged apples at the market?

For the source of the ATO view, refer to GSTD 2000/6 - *Goods and Services Tax: when is the supply of food packaging GST-free in terms of section 38-6 of the A New Tax System (Goods and Services Tax) Act 1999?*

Answer

The bagging service is a taxable supply as per section 9-5 and paragraph 9-10 (2)(b) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

In relation to the sale of the bagged apples, the apples will be GST-free as per section 38-2 of the GST Act. In addition it is considered that in most cases the packaging of the apples will be GST-free as per section 38-6 of the GST Act as the packaging will usually be necessary and normal. Paragraph 1 and 2 of *Goods and Services Tax Determination GSTD 2000/6* discusses this.

Explanation

Section 38-6 of the GST Act states:

> Packaging of food
>
> - A supply of packaging in which food is supplied is GST-free if the supply of the food is GST-free.
> (2) However, the supply of the packaging is GST-free under this section only to the extent that the packaging:
>
> - is necessary for the supply of the food;
> - and (b) is packaging of a kind in which food of that kind is normally supplied.'

It is considered, in most cases, that the packaging component of bagged apples will be intended to contain, promote or protect the apples. Consequently such packaging will be GST-free.

The issue of packaging for food is considered in GSTD 2000/6 - *Goods and Services Tax: when is the supply of food packaging GST-free in terms of section 38-6 of the A New Tax System (Goods and Services Tax) Act 1999?*

2.20 Sundry

2.20.1 - Olives

Question

Are raw/unprocessed olives GST-free as food for human consumption?

Non-interpretative – straight application of the law

Answer

Yes, raw/unprocessed olives are GST-free as food for human consumption pursuant to section 38-2 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

Explanation

A supply of food will be GST-free under section 38-2 of the GST Act. The term 'food' is defined in subsection 38-4(1) to include 'food for human consumption (whether or not requiring processing or treatment)'.

Raw/unprocessed olives satisfy the definition of food contained in paragraph 38-4(1)(a) of the GST Act.

However, under paragraph 38-3(1)(c) of the GST Act, a supply of food will not be GST-free if it is food of a kind that is specified in the table in clause 1 of Schedule 1 of the GST Act (Schedule 1).

Raw/unprocessed olives are not specified in Schedule 1.

In addition, the supply of raw/unprocessed olives does not fall within any of the other exclusions in section 38-3 of the GST Act.

Accordingly, the supply of raw/unprocessed olives is a GST-free supply, even though raw/unprocessed olives are unpalatable.

3 Dairy

3.1 Deregulation

3.1.1 - Dairy Industry Restructuring Compensation Package

This issue is no longer relevant as the Dairy Exit Program (DEP) ceased in 2003 and the Dairy Structural Adjustment Program (DSAP) ceased in 2008. The issue previously stated:

Question

Will dairy farmers be liable for GST on payments made under the Dairy Structural Adjustment Program and the Dairy Exit Program?

For the source of the ATO view, refer to paragraph 33 of - *Goods and services tax: grants of financial assistance*

Answer

No.

Explanation

Payments made to dairy farmers under either the Dairy Structural Adjustment Program (DSAP) or Dairy Exit Program (DEP) are considered to be grants of financial assistance. The GST treatment of grants is discussed in Goods and Services Tax Ruling *GSTR 2000/11 Goods and Services Tax: Grants of Financial Assistance*.

Paragraph 10 of the ruling states:

> 'GST is payable in respect of taxable supplies. Supplies made in connection with the receipt of a grant will be subject to GST where the grant represents consideration for a supply which is a taxable supply'

It is, therefore, necessary to determine whether dairy farmers make a supply in relation to the payments under both DSAP and DEP.

Section 9-10 of *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) defines the meaning of supply. It says that a supply is any form of supply whatsoever and includes the creation, grant, transfer, assignment or surrender of any right.

However, paragraph 33 of GSTR 2000/11, states:

> For there to be a supply of rights or obligations, such rights or obligations must be binding on the parties. The creation of expectations among the parties does not establish a supply. An agreement that does not bind the parties in some way would not be sufficient to establish a supply by one party to the other unless there is something else, such as goods or some other benefit, passing between the parties.

Dairy Structural Adjustment Program

The DSAP consists of payments from the Dairy Adjustment Authority (DAA) to dairy farmers. This is to assist them to adjust to a deregulated environment. DSAP payments are paid to dairy farmers who operate as various entities including sole traders, partnerships, companies and trusts. There are three types of payment under the scheme:

- standard payments
- exceptional events supplementary payments, and

- anomalous circumstance payments.

In order to be eligible for standard payments, dairy farmers must hold an eligible interest in the enterprise at 6:30pm on 28 September 1999 and the enterprise must have delivered milk during the financial year beginning on 1 July 1998. Similar provisions apply in the case of exceptional events supplementary payments and anomalous circumstance payments. The main requirement placed on the recipients of these payments is that written claims contain enough information to enable the Dairy Adjustment Authority to determine eligibility for payment.

In the case of payments made under the Dairy Structural Adjustment Program (DSAP) no obligation is placed on the recipient.

Therefore, there is no supply.

Dairy Exit Program

The DEP payments are made to assist farmers who exit the dairy industry and are paid by Centrelink. In order to be eligible for payment the recipient must first be granted a DSAP payment right. They are also required to sell their farm and exit the dairy industry. It is understood that there is a requirement that the farmer is to remain outside the agricultural industry for five (5) years but this is not binding on the recipient of the payment.

The requirement to be excluded from an industry for a period of time is a restrictive covenant. If a restrictive covenant is enforced it will be a supply. However, in circumstances where the obligation is not binding, there is no supply.

In addition, under the DEP program the dairy farmers have already exited the industry and consequently the supply will not be made in the course or furtherance of an enterprise that they are carrying on. Therefore, it is considered that on this basis any obligation entered into in relation to the DEP program will not constitute a taxable supply.

3.2 Levies

3.2.1 - Dairy Adjustment Levy

Questions

Are the intermediate entities making taxable supplies in relation to the Dairy Adjustment Levy (DAL) collected for Commonwealth Department of Agriculture, Fisheries, and Forestry – Australia (AFFA)?

This issue is no longer relevant as the DAL ceased to be payable in February 2009

Are the intermediate entities required to show the DAL collected at G1 and G11 of their Business activity statement (BAS)?

This issue is no longer relevant as the DAL ceased to be payable in February 2009

Is the levy amount considered to be ordinary income of the intermediaries and need to be included at T1 on their BAS?

This issue is no longer relevant as the DAL ceased to be payable in February 2009

Background

The DAL is administered by AFFA and is levied on all retail sales of liquid dairy products. The levy rate is 11 cents per litre. This levy is not subject to GST as it is included in the *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees*

and Charges) Determination 2007 (No.1) (Treasurer's Determination) pursuant to Division 81 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act).

The retailer is responsible for payment of the levy and they are required to pay it to the wholesaler/distributor at the same time the product is paid for or 90 days after the sale, whichever is the earliest. In turn, the wholesaler/distributor must include the levy collected from the retailer in the price that they pay the processor. The processor then pays the money to the Commonwealth. It is shown as a separate line item on each invoice that passes between the parties. The wholesaler/processor holds the money in trust for AFFA.

Processors are required to notify AFFA of any late or non-payments and penalties apply.

Question 1

Are the intermediate entities making taxable supplies in relation to the DAL collected for AFFA?

Answer

No.

Explanation

AFFA is making a supply to the retailers in that they are obligated to spend the money collected to assist the Dairy Industry. The levy payment by the retailers represents consideration for that supply.

This arrangement would normally constitute a taxable supply, except for the fact that the DAL is specifically excluded from GST by virtue of the Treasurer's Determination.

The wholesaler/distributor is required to advise the retailer that they are liable for the levy of 11c per litre on liquid milk products delivered. They are, in turn, required to pay that amount to the processor. The documentation provided to the processor must show the amount of levy included in the payment.

The processor is then required to forward the levy amount to AFFA and must provide supporting documentation.

It is not considered that these intermediaries make any supplies in relation to the transfer of the levy between themselves. The intermediaries merely act as collection agents for AFFA.

Consequently the payment of the levy remains outside the GST regime throughout the entire supply chain. Therefore GST cannot be charged on this component anywhere within the supply chain.

Question 2

Are the intermediate entities required to show the DAL collected in their BAS?

Answer

No.

Explanation

These intermediate entities are not considered to be making any supplies or acquisitions in relation to the transfer of the levy, as they are merely collection agents for AFFA. Therefore no entries are required on these entities' BAS for this levy.

Question 3

Is the levy amount considered to be ordinary income of the intermediaries and need to be included at T1 on their BAS?

Answer

No.

Explanation

The collection of the Dairy Adjustment Levy is performed as a collection agent of the Commonwealth, (section 97 of the *Dairy Industry Adjustment Act 2000* (DIAA)). Similarly, the collection may be undertaken by sub-agents of the Commonwealth (sections 98 and 99 of the DIAA).

Dairy adjustment levy amounts do not represent ordinary income of the collection agent or sub-agent, as these amounts are not derived, they are merely collected on behalf of the Commonwealth. The amounts are not instalment income and not included at label T1 of the Activity Statement.

3.3 Milk

3.3.1 - Unprocessed cow's milk -GST-free status

Question

Is unprocessed cow's milk subject to GST?

Non-interpretative – straight application of the law

Answer

Yes. Unprocessed cow's milk is subject to GST pursuant to paragraph 38-4(1)(ga) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

Explanation

A supply of food is GST-free pursuant to section 38-2 of the GST Act. 'Food' is defined in section 38-4 of the Act to include:

- '(a) food for human consumption (whether or not requiring processing or treatment);
- (b) ingredients for food for human consumption;
- (c) beverages for food for human consumption;
- (d) ingredients for beverages for human consumption;

- (e) goods to be mixed with or added to food for human consumption (including condiments, spices, seasonings, sweetening agents or flavourings);
- (f) fats and oils marketed for culinary purposes;

but does not include:

(ga) unprocessed cow's milk; ...'

Therefore, cow's milk will be GST-free once it has been subjected to any process (other than filtration). Processes that the milk is subjected to may include several, but not all, of the following:

- Separation;
- Evaporation;
- Pasteurisation;
- Re-hydration;
- Homogenisation; and
- Reconstitution.

Filtration is not considered to be a 'process', on the basis that all milk leaving the farm has been subjected to some form of filtration and if this were considered a process for the purposes of the GST Act, the provision would become inoperative. For more details please refer to Issue 2 of the Food Industry Partnership - issues register.

3.3.2 - Supplies of excess unprocessed milk

Question

Are the supplies of excess unprocessed milk between dairy manufacturers taxable?

Non-interpretative – straight application of the law

Background

- Dairy manufacturers have contracts with dairy producers to receive all the milk produced by them.
- Excess milk supplies occur at times during the year.
- These excess supplies may be given to other dairy manufacturers who process the milk as their own.
- The payment by one dairy manufacturer to another for the milk received is usually by way of milk (which would be of equivalent protein and milk fat content). Sometimes the payment is in cash at the end of the financial year.
- Often, there are no formal contracts drawn for these arrangements.
- Most dairy manufacturers account on a non-cash basis.

Answer

Yes.

Explanation

The supplies of unprocessed milk would be taxable if section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) is satisfied.

Section 9-5 of the GST Act provides:

> You make a taxable supply:
>
> - you make the supply for consideration; and
> - the supply is made in the course or furtherance of an enterprise that you carry on; and
> - the supply is connected with Australia; and
> - you are registered, or required to be registered.
>
> However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

Supply

The definition of supply as provided for in section 9-10 of the GST Act is very broad and includes the supply of goods.

The provision of milk would fall within this definition.

Consideration

A taxable supply must be for consideration, which includes everything that the supplier has received for the goods. Section 9-15 of the GST Act states that it includes any payment, act or forbearance done in connection with the supply of the thing.

The return of the milk or any payment in cash would be consideration for the supply of milk.

Provided that paragraphs 9-5 (b) - (d) of the GST Act are also satisfied, the supplies of the unprocessed milk between dairy manufacturers will be taxable.

3.3.3 - Milk and creditable acquisitions?

Question

Are the acquisitions of milk creditable acquisitions?

Non-interpretative – straight application of the law

Background

- Dairy manufacturers have contracts with dairy producers to receive all the milk produced by them.
- Excess milk supplies occur at times during the year.
- These excess supplies may be given to other dairy manufacturers who process the milk as their own.
- The payment by one dairy manufacturer to another for the milk received is usually by way of milk (which would be of equivalent protein and milk fat content). Sometimes the payment is in cash at the end of the financial year.
- Often, there are no formal contracts drawn for these arrangements.

- Most dairy manufacturers account on a non-cash basis.
-

Answer

Yes

Explanation

The acquisition of milk by the dairy manufacturers would be creditable acquisitions if section 11-5 of the GST Act is satisfied.

Section 11-5 of the GST Act provides:

> You make a creditable acquisition if:
>
> - you acquire anything solely or partly for a creditable purpose; and
> - the supply of the thing to you is a taxable supply; and
> - you provide, or are liable to provide, consideration for the supply; and
> - you are registered, or required to be registered.

Acquisition

Acquisition is defined in section 11-10 of the GST Act to include an acquisition of goods. The acquisition of milk would satisfy this section.

Creditable purpose

Subsection 11-15(1) of the GST Act provides that a thing is acquired for a creditable purpose to the extent that it is acquired in the carrying on of an enterprise. As the milk is acquired by dairy manufacturers to be processed into dairy products, the milk would be acquired for a creditable purpose.

Therefore, provided the other requirements of section 11-5 of the GST Act are met, the acquisitions of milk will be creditable acquisitions.

3.3.4 - Valuing supplies of milk

Question

What would the value of the milk be?

Non-interpretative – straight application of the law

Background

- Dairy manufacturers have contracts with dairy producers to receive all the milk produced by them.
- Excess milk supplies occur at times during the year.
- These excess supplies may be given to other dairy manufacturers who process the milk as their own.
- The payment by one dairy manufacturer to another for the milk received is usually by way of milk (which would be of equivalent protein and milk fat content). Sometimes the payment is in cash at the end of the financial year.
- Often, there are no formal contracts drawn for these arrangements.

- Most dairy manufacturers account on a non-cash basis.

Answer

The value of milk would be based on the market value at the time of supply.

3.3.5 - Milk manufacturer accounting on non cash basis

Question

When does the GST liability and input tax credits entitlement occur when a manufacturer accounts on a non-cash basis?

Non-interpretative – straight application of the law

Background

- Dairy manufacturers have contracts with dairy producers to receive all the milk produced by them.
- Excess milk supplies occur at times during the year.
- These excess supplies may be given to other dairy manufacturers who process the milk as their own.
- The payment by one dairy manufacturer to another for the milk received is usually by way of milk (which would be of equivalent protein and milk fat content). Sometimes the payment is in cash at the end of the financial year.
- Often, there are no formal contracts drawn for these arrangements.
- Most dairy manufacturers account on a non-cash basis.

Answer

Please refer to explanation below

Explanation

Where the supplies are taxable supplies, each party will be liable for GST on the supply of milk that they make.

When a manufacturer accounts on a non-cash (accruals) basis, the following rules apply with regard to GST liability and input tax credit entitlement.

Subsection 29-5(1) of the GST Act states that GST payable on a supply is attributed to the tax period in which:

- any consideration is received for the supply; or
- an invoice is issued for the supply;

whichever is the earlier.

Subsection 29-10(1) of the GST Act states that eligibility for an input tax credit arises in the tax period in which:

- payment is made for the supply; or
- an invoice was issued for the acquisition;

whichever is the earliest.

In order to claim input tax credits, a tax invoice is required from the entity making the taxable supply.

4 Invoices

4.1 Agents

4.1.1 - Agents issuing recipient created tax invoices

Question

Can an agent for a recipient (buyer) issue recipient created tax invoices (RCTI's)?

For the source of the ATO view, refer to:

- paragraph 73 of GSTR 2000/37 - *Goods and services tax: agency relationships and the application of the law*
- GSTR 2000/10 - *Goods and services tax: recipient created tax invoices*

Answer

Yes. An agent for the recipient (buyer) of the supply may issue a RCTI provided all the requirements in the Commissioner's determination (Determination) are met and applied to the supplier in question.

Explanation

The position at common law is that a supply or acquisition your agent makes on your behalf is no different from one that you make yourself. An agent may act on behalf of his principal and this may include preparation and issuing of a document such as a tax invoice. Nothing contained in the GST legislation or in any GST rulings precludes this principle from applying to agents preparing and issuing RCTI's on behalf of their principal's. In addition subsection 29-70(3) of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) makes it clear that a RCTI is a tax invoice.

It should be noted that stock and station agents acting on behalf of suppliers of primary produce would not be able to produce RCTI's on behalf of the recipients (buyers) of the supplies. Only an agent for the recipient (buyer) of a supply is able to produce a RCTI on behalf of the recipient (buyer).

Goods and Services Tax Ruling - *Goods and services tax: recipient created tax invoices explains the determination that the Commissioner has made under subsection 29-70(3) of the GST Act*.

The Determination is about the three broad classes of tax invoices that a recipient of a taxable supply may issue. The Ruling sets out certain requirements a recipient must follow when issuing an RCTI and also describes the information that an RCTI must contain. Therefore, if the recipient of a supply satisfies the criteria outlined in the ruling then the recipient may issue RCTI's.

4.1.3 - Dealing through agents

Question

Which entity is the entity making a taxable supply of sugar cane in the following situation: the sugar cane assignment holder (A) provides the land and sugar assignment to a related business entity (B) by virtue of a written agreement, lease or contract and that related entity then produces and sells

cane to the mill. The related business entity is neither subcontracted by the assignment holder nor acts as agent of the holder.

Non-interpretative – straight application of the law

Answer

In this situation, it is considered that it is the business entity (B) which sells the cane to the mill that is making the taxable supply to the mill (as unprocessed cane is not food), not the assignment holder (A).

Explanation

Only the entity that is entitled to the proceeds or legally incurs the expenses is liable for GST and can claim input tax credits for creditable acquisitions. The business entity (B) will need to apply for an ABN and register for GST if required to do so. It may also be possible for the cane assignment holder (A) to register for an ABN, provided that they meet the necessary requirements.

If the cane assignment holder (A) is registered or required to be registered for GST and provides the land and cane assignment to the business entity (B) by way of a lease or contract, the normal GST rules will apply, provided that the consideration is based on commercial rates. The cane assignment holder (A) will make a taxable supply to the business entity (B) and will be liable for GST on that transaction. The business entity (B) will be entitled to claim input tax credits for any creditable acquisitions that it makes.

Where the cane assignment holder (A) is registered or required to be registered for GST and there is a written agreement, lease or contract under which there is no consideration payable or where the consideration is not based on commercial rates, it will be necessary to consider the application of Division 72 of A New Tax System (Goods and Services Tax) Act 1999 (the GST Act).

This Division ensures that supplies to, and acquisitions from, your associates without consideration are brought within the GST system, and that supplies to your associates for inadequate consideration are properly valued for GST purposes. Associate is a defined term in section 195-1 of the GST Act. It has the meaning given by section 318 of the Income Tax Assessment Act 1936.

It is important to note that Division 72 of the GST Act will only apply if the recipient of the supply is not entitled to a full input tax credit. The recipient will not be entitled to a full input tax credit where they are not registered or required to be registered or if the acquisition was not solely for a creditable purpose.

Additional Information on this Issue can be viewed at issue 2.6.4.

4.1.4 - Model tax invoices (issued by the agent)

Question

What does a tax invoice which is issued by an agent on behalf of the vendor, have to contain to satisfy the provisions of the GST legislation?

For the source of the ATO view, refer to paragraphs 95 to 98 of GSTR 2013/1 – *Goods and services tax: tax invoices*.

Answer

A tax invoice is a document that satisfies the relevant provisions of the GST legislation. The form of the model tax invoice document provided below satisfies the GST legislation in regard to information requirements. However, these information requirements can be met in other forms. It is the information content that is imperative and must comply with GST legislation and not the particular format.

The attached model tax invoice has an account statement for client convenience contained on the same page. This account statement does not form part of the tax invoice being issued by the agent.

Explanation

Provided all the requirements of the GST legislation are met there is no objection to additional information being provided on tax invoices. For example an agent may wish to provide an 'account statement' for their client's convenience in addition to the tax invoice being provided for taxable supplies that the agent has made. The attached model tax invoice has an account statement for client convenience contained on the same page. This account statement does not form part of the tax invoice being issued by the agent.

<table>
<tr><td colspan="5">Tax invoice (issued by the agent for his services to his client)</td></tr>
<tr><td colspan="5">1. An agent must show his identity and ABN.
2. The identity or ABN of the vendor (who is the recipient of the agent's services), must be able to be clearly ascertained where the total of the invoice is $1,000 or more.</td></tr>
<tr><td>From:</td><td>1. Agent:</td><td>Stock Livestock Agents Co
ABN: xx-xxx-xxx-xxx</td><td colspan="2" rowspan="2">Date:30 July 2010</td></tr>
<tr><td colspan="3"></td></tr>
<tr><td>To:</td><td>2. Client:</td><td>J. Williams
Carisbrook
Kingsville, Tasmania
ABN: xx-xxx-xxx-xxx</td><td></td><td></td></tr>
<tr><td colspan="5">Supplies made to client</td></tr>
<tr><td colspan="2">Description of supply</td><td>Value</td><td>GST</td><td>Price</td></tr>
<tr><td colspan="2">Taxable supplies</td><td></td><td></td><td></td></tr>
<tr><td colspan="2">Agent's commission</td><td>$189.10</td><td>$18.91</td><td>$208.01</td></tr>
<tr><td colspan="2">Total of taxable supplies</td><td>$189.10</td><td>$18.91</td><td>$208.01</td></tr>
</table>

Account statement (for client's convenience)

This section does not constitute a 'tax invoice' in itself.
Your agent may hold a tax invoice in relation to any or all of these supplies.

Acquisitions for client arranged by agent

Description of supply		Value	GST	Price
Date	**Taxable supplies**			
1/7/2010	Farming organisation fees	$19.40	$1.94	$21.34
Sub-total				$19.40
	GST-free supplies			
	Cattle transaction levy	$34.50		$34.50
Sub-total				$34.50
Total of acquisitions for client		$53.90	$1.94	$55.84
Total of supplies to client and acquisitions for client				$263.85
Supplies made by client via agent				
Description of supply		**Value**	**GST**	**Price**
Date	**Taxable supplies**			
3/7/2010	1 steers @ $275	$275.00	$27.50	$302.50
4/7/2010	1 heifer @ $255	$255.00	$25.50	$280.50
Sub-total				$530.00
Date	**GST-free supplies**			
5/7/2010	100 bags carrots @ $650/b	$650.00		$650.00
5/7/2010	96 cartons cauliflowers @ $10.00/c	$960.00		$960.00
Sub-total				$1610.00
Total of supplies made via agent				$2140.00
				§ $53.00
				$2193.00
Amount deposited to your bank A/C (after deduction of agent's supplies and acquisitions) $1929.15				
§ The GST shown is payable by the vendor (client of the agent) and should be shown on the vendor's activity statement (BAS) for the relevant tax period				

Note
When completing your BAS, you should ensure that only supplies made in the relevant tax period are included on it. You may need to consider whether you account on a 'cash' or 'non-cash' basis

4.1.5 - Tax invoices when acting as an agent for farmers and the agent for the carriers.

Question

Where you are the agent for two parties (for example a farmer and a livestock carrier) who transact with each other through you and you charge each party a commission for your services, what are the tax invoice requirements?

For the source of the ATO view, refer to paragraphs 61 - 66 of – *Goods and services tax: agency relationships and the application of the law*.

Answer

An agent can issue a document that is a tax invoice for supplies made as an agent as well as supplies made on his own account.

Explanation

Example:

A farmer sells livestock via his agent Acme Livestock Agents. The farmer is supplied with cartage services by Bob's Transport Company. Acme Livestock Agents arrange the transport in the capacity as agent for Bob's Transport Company. Acme Livestock Agents charge both the farmer and Bob's Transport Company for agency services.

Question: Can both the supply of transport services and the supply of agency services be included on the one tax invoice issued by Acme Livestock Agents to the farmer?

Answer: Yes.

Division 153 has special rules about tax invoices and agents. It reflects the position at common law that a supply or acquisition an agent makes on behalf of a principal is no different from one that the principal makes themselves. Accordingly, if a principal makes a taxable supply through an agent, the agent can issue a tax invoice for the principal. Similarly, a principal may claim an input tax credit for a creditable acquisition they make through their agent if their agent holds the tax invoice.

A 'dual agency' situation may occur where an agent's 'principal' is making creditable acquisitions from a 'third party' through the agent. This should be distinguished from an agent merely making a disbursement to another party on behalf of their principal.

The agent may also be in an agency relationship with the 'third party' (that is the 'third party' is also a principal of the agent) who is supplying services through the agent to the 'principal'.

Where an agent acting in this dual capacity supplies services to his principal (that is commission), the principal will require a tax invoice. The tax invoice may also include acquisitions made by the principal through the agent (in his agency capacity for the 'third party').

Therefore, an agent may provide a tax invoice to his principal, which includes supplies made under an agency relationship as well as supplies made on his own account.

4.3 Model tax invoice (issued by the supplier)

4.3.1 - Model tax invoice requirements

Question

What does a tax invoice have to contain to satisfy the provisions of the GST legislation?

Non-interpretative – other references (see – *Goods and services tax: tax invoices*).

Answer

A tax invoice is document that satisfies the relevant provisions of the GST legislation. The form of the model tax invoice document provided below satisfies the GST legislation in regard to information requirements. However, these information requirements can be met in other forms. It is the information content that is imperative and must comply with GST legislation and not the particular format.

Explanation

The information required in a tax invoice is set down in subsection 29-70(1) of *the A New Tax System (Goods and Services Tax) Act 1999* (GST Act). Paragraph 29-70(1)(b) of the GST Act also requires that the invoice be in an 'approved form'.

Supplier (vendor) created tax invoice

1. The vendor's identity and ABN must be shown.
2. Where the total of the invoice is $1,000 or more, the identity or ABN of the recipient must be able to be clearly ascertained on the invoice.

To: 2. Recipient:			
J. Richards 'Northbrook' Kingsville, Tasmania ABN: xx-xxx-xxx-xxx			
Date:30 July 2010			
From: 1. Vendor			
J. Williams 'Carisbrook' Kingsville, Tasmania ABN: xx-xxx-xxx-xxx			
Description of supply	**Value**	**GST**	**Price**
Taxable supplies			
2 tonnes seed wheat @ $195/t	$390.00	$39.00	$429.00
1 tonne hay @ $125/t	$125.00	$12.50	$137.50
2 tonne hay @ $135/t	$270.00	$27.00	$297.00
2 steers @ $295	$590.00	$59.00	$649.00
Sub total			$1,375.00
GST-free supplies			
100 bags carrots @ $6.50/b	$650.00		$650.00
96 cartons cauliflower @ $10.00/c	$960.00		$960.00
Sub total			C $1610.00
Totals			*$2985.00
			§ $137.50
			# $3122.540
The **footnotes** below are to help the **vendor** in the preparation of the business activity statement (BAS) for the relevant period. Ç GST-free supplies (include in item G3 on the BAS for the relevant tax period). *This sum forms part of instalment income for PAYG purposes (include at item T1 on the BAS for the relevant tax period). § The GST shown will form part of the total GST payable by the supplier on the BAS for the relevant tax period. # GST inclusive income received (include at item G1 on the BAS for the relevant tax period).			

4.4 Recipient created tax invoices (RCTI)

4.4.1 Can recipients of supplies of wild game issue recipient created tax invoices (RCTI)?

Non-interpretative other references (see GSTR 2000/10 – *Goods and services tax: recipient created tax invoices*).

Answer

Yes, subject to the recipient and the supplier meeting certain requirements. It is necessary to consider *A New Tax System (Goods and Services Tax) Act 1999*

Classes of Recipient Created Tax Invoice Determination (No. 1) 2000 and attached to *Goods and Services Tax Ruling GSTR 2000/10 Goods and Services Tax: recipient created tax invoices*. Where all of the requirements are satisfied the recipient may issue a RCTI. One of the main requirements is that there must be a written agreement between the recipient and supplier (see below for details).

Explanation

There are a number of requirements that must be satisfied by a recipient (processor) of a taxable supply to issue a valid RCTI. These are contained in GSTR 2000/10.

The requirements are:

- the recipient (processor) must be registered for GST
- the recipient must set out in the tax invoice the ABN of the supplier
- the recipient must issue the original or a copy of the tax invoice to the supplier within 28 days of making, or determining, the value of a taxable supply and must retain the original or the copy
- the recipient must issue the original or a copy of an adjustment note to the supplier within 28 days of the adjustment and must retain the original or the copy
- the recipient must reasonably comply with its obligations under the taxation laws
- the recipient and the supplier must have a written agreement specifying the supplies to which it relates, that is current and effective when the RCTI is issued agreeing that
  - (i) the recipient may issue tax invoices in respect of the supplies
  - (i) the supplier will not issue tax invoices in respect of those supplies
  - (iii) the supplier is registered for GST when it enters the agreement and it will notify the recipient if it ceases to be registered
  - (iv) the recipient is registered for GST and that it will notify the supplier if it ceases to be registered for GST or if it ceases to satisfy any of the requirements of the determination
- the recipient must not issue a document that would otherwise be an RCTI, on or after the date when the recipient or the supplier has failed to comply with any of the requirements of this determination.

A RCTI must also satisfy the tax invoice requirements as specified in section 29-70 of the GST Act.

The following points should also be noted:

- GSTR 2000/10 also states at paragraph 43 that to ensure compliance with the GST law (and for the protection of the supplier) permission to issue RCTIs is available only to taxpayers who reasonably comply with the taxation laws.
- If you fail to satisfy all of the requirements when issuing a RCTI, it will not be treated as being within the class of invoices determined as RCTIs (GSTR 2000/10 paragraph 48).

- If this happens, you cannot attribute an input tax credit for the supply to a tax period (even though it may be for a creditable acquisition) until you hold a valid tax invoice issued by your supplier. To obtain the input tax credits, you can request a tax invoice for the supply from your supplier, who must give it to you within 28 days after your request (GSTR 2000/10 paragraph 49).

4.4.2 - Recipient created tax invoice (RCTI) agreement

Question

What form should an agreement to issue a recipient created tax invoice (RCTI) take?

Non-interpretative – other references (see - *Goods and services tax: recipient created tax invoices*).

Answer

The *A New Tax System (Goods and Services Tax) 1999* (GST Act) does not prescribe any particular format for RCTI agreements. The information that must be contained in a RCTI is listed in subsection 29-70(1) of the GST Act and Goods and Services Tax Ruling GSTR 2000/10 - *Goods and services tax: recipient created tax invoices*.

However, it should be noted that a particular industry RCTI determination may contain other pre-conditions.

Subject to the above, a format that may be suitable to adopt is attached.

If you make supplies to which GST will apply, and you enter into the RCTI agreement, the recipient, (identity of recipient) will be able to issue tax invoices on your behalf, saving you considerable paperwork.

To allow us, (print identity of recipient) to issue a tax invoice (called a RCTI), we require there to be a written RCTI agreement between you, the supplier and the recipient.

Parties to the agreement:

The name of the recipient is:
.....(print full identity of recipient).....
The name of the business entity making taxable supplies to the recipient is:
.....(identity of supplier recorded here)..... (hereafter referred to as 'the supplier')

ABN of the supplier

Agreement:

The supplies to which this agreement relates are:
.....
The **supplier** agrees that:

- it is registered for GST when it enters into this agreement
- it will notify the recipient if the supplier ceases to be registered for the GST
- the recipient may issue tax invoices in respect of the above mentioned supplies

- it will not issue tax invoices to the recipient for supplies made to the recipient.

The recipient agrees that:

- it is registered for the GST when it enters into this agreement
- it will notify the supplier if the recipient ceases to be registered for the GST
- it will not issue a document that would otherwise be an RCTI, on or after the date when recipient or the supplier has failed to comply with any of the requirements of the determination attached to Tax Ruling GSTR2000/10.

Declaration: ·I·declare·for·the·supplier·that·the·information·on·this·form·is·accurate,·and·that·I·am·authorised·to·make·this·declaration.¤	**Declaration:** ·I·declare·for·the·recipient·that·the·information·on·this·form·is·accurate,·and·that·I·am·authorised·to·make·this·declaration.¤
Signature:·.....¤	Signature:·.....¤
Date·..../...../.....¤	Date·..../...../.....¤
Title·(Mr,·Mrs,·Miss,·Ms·or·other·title) ·.....¤	°¤
.....¤ ·(Family·name)¤	.....¤ ·(Position·held·in·business·entity)¤
.....¤ ·(First·given·name)¤	°¤
.....¤ ·(Other·given·names)¤	°¤

4.4.4 - Model tax invoices

Question

What does a recipient created tax invoice have to contain to satisfy the provisions of the GST legislation?

Non-interpretative – other references (GSTR 2000/10 – *Goods and services tax: recipient created tax invoices*).

Answer

A recipient created tax invoice (RCTI) is a class of tax invoice that may be issued by a recipient of a taxable supply, where it falls into a category designated in *A New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created Tax Invoice Determination (No. 1) 2000.*

The form of the model RCTI document provided below satisfies the relevant provisions of the GST legislation in regard to information requirements. However, these information requirements can be met in other forms. It is the information content that is imperative and must comply with GST legislation and not the particular format.

Explanation

Under subsection 29-70(3) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), a RCTI is a tax invoice belonging to a class of tax invoices that we have determined in writing may be issued by the recipient of a taxable supply.

A determination has been made by us in *A New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created Tax Invoice Determination (No.1) 2000* (Determination) issued in Schedule 1 to Goods and Services Tax Ruling *GSTR 2000/10 Goods and services tax: recipient created tax invoices*, concerning the three classes of tax invoices that may be issued by a recipient of a taxable supply. These classes are contained in Clause 3 of the determination, part of which is reproduced below:

> **'Classes of tax invoices that may be issued by the recipient of a taxable supply**
>
> 1. A recipient of a taxable supply may issue a tax invoice that belongs to a class of tax invoices specified in each of the following paragraphs:
>
> - (a) a tax invoice for a taxable supply of agricultural products where the recipient:
>   - (i) determines the value of those products after the supply is made using a qualitative or quantitative process; and
>   - (ii) satisfies the requirements set out in Clause 4;
> - (b).....
> - (c) .....
> - (d) .....
>
> **Requirements that must be satisfied by a recipient of a taxable supply**
>
> 2. A recipient must satisfy the following requirements:
>
> - (a) the recipient must be registered for GST;
> - (b) the recipient must set out in the tax invoice the ABN of the supplier;
> - (c) the recipient must issue the original or a copy of the tax invoice to the supplier within 28 days of making, or determining, the value of a taxable supply and must retain the original or the copy;
> - (d) the recipient must issue the original or a copy of an adjustment note to the supplier within 28 days of the adjustment and must retain the original or the copy;
> - (e) the recipient must reasonably comply with its obligations under the taxation laws;
> - (f) the recipient must issue the tax invoice pursuant to a written agreement that the recipient has with the supplier which specifies the supplies to which it relates and contains the following terms:
>   - the recipient may issue tax invoices in respect of the specified supplies;
>   - the supplier will not issue tax invoices in respect of those supplies;

- the supplier acknowledges that it is registered when it enters the agreement and that it will notify the recipient if it ceases to be registered;
- the recipient acknowledges that it is registered when it enters into the agreement and that it will notify the supplier if it ceases to be registered;

- (g) the recipient must not issue a document that would otherwise be a recipient created tax invoice, on or after the date when the recipient or the supplier has failed to comply with any of the requirements of this determination.'

The information required in a RCTI is set down in subsection 29-70(1) of the GST Act. Paragraph 29-70(1)(b) also requires that the invoice be in an 'approved form'.

Recipient created tax invoice				
Recipient created tax invoices may be issued in circumstances as described *in A New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created Tax Invoice Determination (No. 1) 2000.* 1. The recipient's identity or ABN must be able to be clearly ascertained. 2. The identity of the vendor (the supplier of goods to the recipient) and the vendor's ABN must be able to be clearly ascertained.				
From:	1. Recipient:	Kingsville Feedlot Co Ltd 43 Wyandra Street Kingsville, Tasmania ABN: xx-xxx-xxx-xxx	Date:30 July 2010	
To:	2. Vendor:	J. Williams 'Carisbrook' Kingsville, Tasmania ABN: xx-xxx-xxx-xxx		
Supplies made by vendor to recipient				
Description of supply		**Value**	**GST**	**Price**
Taxable supplies				
1 steer @ $275		$275.00	$27.50	$302.50
2 steers @ $295		$590.00	$59.00	$649.00
1 steer @ $255		$255.00	$25.50	$280.50
1 heifer @ $255		$255.00	$25.50	$280.50
2 steers @ $285		$570.00	$57.00	$627.00
Sub total		$1945.00		
GST-free supplies				
100 bags carrots @ $6.50/b		$650.00		$650.00
96 cartons cauliflowers @ $10.00/c		$960.00		$960.00
Sub total		Ç $1610.00		
Totals		* $3555.00	§ $194.50	# $3749.50
Amount deposited to your bank account				**$3749.50**
The **footnotes** below are to help the **vendor** only in the preparation of the BAS).				
Ç GST-free supplies (include in item G3 on the BAS for the relevant tax period). * Sum forms part of instalment income for PAYG purposes (include in item T1 on the BAS for the relevant tax period. **§** The GST shown will form part of the total GST payable by the vendor (supplier) on the BAS for the relevant tax period. # GST inclusive income received (include in item G1 on the BAS for the relevant tax period).				

4.4.5 - RCTIs and co-ops and marketing boards.

Question

Where an organisation (for example, a cooperative or a marketing board) issues a recipient created tax invoice (RCTI), is the organisation also able to

include in that document charges for taxable supplies made by the organisation to the grower?

For the source of the ATO view, refer to:

- GSTR2000/10 - *Goods and services tax: recipient created tax invoices*
- GSTR 2000/37 - *Goods and services tax: agency relationships and the application of the law*.

Answer

An organisation can only issue an RCTI when it takes ownership of the produce and the supply by the grower is subject to GST and falls within the written RCTI agreement between the organisation and the grower. That is, a valid RCTI may only be generated as long as the supply by the grower to the organisation is taxable.

For practical convenience, where an organisation makes a taxable supply to a grower to whom it is issuing an RCTI, the organisation can include on the same page as the RCTI a separate tax invoice recording the taxable supply to the grower (for example, sales of fertiliser to the grower).

In doing so, no set-off of the consideration of one supply against the consideration of the other supply is allowable in the calculation of the GST liability as the GST legislation does not allow the price of one supply to be reduced by the price of another supply.

Explanation:

RCTIs are discussed in Goods and Services Tax Ruling GSTR 2000/10. An RCTI must contain all the information required for a tax invoice by subsection 29-70(1) of A New Tax System (Goods and Services Tax) Act 1999 (GST Act).

It should also be noted that an RCTI is a tax invoice belonging to a class of tax invoices that we have determined in writing may be issued by the recipient of a taxable supply. Typically, this occurs in the agricultural industry where the value of agricultural produce is determined by the recipient and is dependent upon by a quantitative or qualitative analysis of the supply.

Where the organisation takes ownership of the produce which is subject to GST

Where a registered grower sells their produce to an organisation, the organisation may supply an RCTI in accordance with a written agreement entered into with the registered grower.

It is common for the organisation to make supplies to the registered grower. For example, sales of fertiliser and pesticides, packaging for produce etc may be supplied by the organisation.

When invoicing the grower for these taxable supplies, the organisation may want to put both documents (RCTI and tax invoice) on the one page for convenience.

As long as both the RCTI and tax invoice that are on the one page contain the appropriate details as required by the GST Act then this will be acceptable for GST purposes.

However, even though there is a close connection between the supply to the organisation and the supply made by the organisation, each is a separate supply and

the GST law does not allow the price for one supply to be reduced by the price of another.

Where the organisation is not taking ownership of the produce (that is acting as agent)

Different arrangements are required when the organisation does not take ownership of the produce. In such a case the actual buyer (recipient) is a third party and the agent organisation sells to that third party on behalf of the grower. Unless there is a written RCTI agreement in place between the grower and the third party, no RCTI could be issued and the grower (or grower's agent) would need to issue an ordinary 'tax invoice' for a taxable supply of produce.

However it may be that the grower will enter into a written RCTI agreement with the third party buyer in respect of taxable produce being sold through the agent organisation. The third party buyer can then issue an RCTI. (The grower's agent may choose to forward this on to the grower or retain it in the agent's records on behalf of the grower and merely pass on information in an 'account sales' document to the grower.) In any 'account sales' documentation the agent organisation may choose to issue to the grower, care should be taken to devote a separate section to any 'tax invoice' the agent wishes to issue for selling services (commission) or other taxable supplies the agent makes to the grower (for example, fertiliser).

As yet a further possibility, the grower's agent may also be acting as agent for the third party buyer. If this is the case and a written RCTI agreement is in place between the grower and the third party, the agent organisation may be authorised to create an RCTI as agent for the buyer. This RCTI will still satisfy the requirements of the GST legislation where the agent organisation chooses to use its own identity or ABN on the RCTI, instead of the buyer's identity or ABN (GSTR 2000/37 paragraph 73).

Model tax invoices can be accessed at 4.3.1 (tax invoice), 4.1.4 (agent/vendor tax invoice) and 4.4.4 (recipient created tax invoice).

4.5 Tax invoices

4.5.1 - Invoice for GST-free supplies

Question

Is it permissible to use a tax invoice when only GST-free supplies are made?

Non-interpretative – straight application of the law

Answer

Any of the following alternatives are acceptable:

- the document contains a prominently displayed statement that the total amount of GST payable is NIL
- the words 'tax invoice' are omitted or crossed out
- the word 'tax' where it precedes the word 'invoice' is omitted or crossed out.

4.5.2 - Monthly statements as invoices

Question

Can a monthly statement from a supplier satisfy tax invoice requirements?

Non-interpretative – straight application of the law

Answer

A monthly statement that complies with the tax invoice requirements of subsection 29-70(1) of the A *New Tax System (Goods and Services Tax) Act 1999* (GST Act) can be used as a tax invoice for GST.

Explanation

All tax invoices require certain information as per section 29-70(1) of the GST Act. Other information may be included on the tax invoice for remittance advice.

Model tax invoices can be accessed at 4.3.1 (tax invoice), 4.1.4 (agent/vendor tax invoice) and 4.4.4 (recipient created tax invoice).

4.5.3 - Tax invoices and copies

Question

Can a tax invoice be copied?

Non-interpretative

Answer

Yes.

Explanation

Sometimes a supplier may issue a tax invoice and the recipient of the supply may request another copy. For example, the tax invoice may be lost or destroyed. If the supplier issues a copy of the tax invoice or a second tax invoice, we suggest that it be marked 'copy' or 'duplicate' to enable easier identification of the document. Where no previous amount has been claimed, you may claim an input tax credit if you hold a tax invoice that is a copy or a re-issued tax invoice.

4.5.4 - Tax invoice splitting

Question

Where two or more GST registered enterprises make a creditable acquisition jointly, how does each enterprise claim their share of any input tax credit entitlement where there is only one tax invoice issued by the supplier?

Answer

See below.

Explanation

The answer will always depend upon the actual facts of each case. The entity making a creditable acquisition will be entitled to an input tax credit. Whether the entity makes taxable supplies to other entities will be a question of fact.

In order to establish entitlement to input tax credits, it must be determined whether there is a creditable acquisition and if so, by whom. In most instances, the entity that has the liability in respect of the relevant acquisition is the one entitled to claim the input tax credit.

The following scenarios provide an example of how these types of situations may be arranged.

1. Two share farmers Alan and Bob purchase a tractor jointly. The supplier issues a tax invoice that is made out to both parties. Alan and Bob will each claim their share of the input tax credit in accordance with a business arrangement that exists between them.

2. The tax invoice for the tractor is made out to sharefarmer Alan even though Bob contributed half of the purchase price of the tractor:

> (a) In this scenario, it may be that Alan who holds the tax invoice, was acting as an agent for Bob in the purchase of Bob's ½ share in the tractor; if so then as Bob's agent Alan may provide Bob with an account statement which would provide details of Bob's share of the tractor acquisition and the GST component that was applicable to Bob's share. This is not a requirement of the GST legislation.

Where Alan as Bob's agent, holds the tax invoice for the tractor then both Alan & Bob will be entitled to claim an input tax credit for their share of the creditable acquisition (that is, the tractor).

> (b) If Alan is not acting as an agent for Bob then Alan may be making a separate taxable supply of a ½ share in the tractor to Bob.

Alan will be required to issue a tax invoice within 28 days when Bob requests one. Bob will be entitled to claim an input tax credit as long as Bob holds a valid tax invoice from Alan for Bob's creditable acquisition (that is, The ½ share in the tractor).

4.6 Stock and station agents

4.6.1 - Account sales documents for stock and station agents

Question

Stock and station agents traditionally send account sales documentation to their vendors advising of the amounts fetched on livestock or produce sold on their behalf, and also advising of expenses. Can the ATO comment on the GST requirements for the different parts of this documentation, and also provide an example of the documentation?

Non-interpretative – straight application of the law

Answer

This is a typical situation faced by many stock and station agents needing to advise vendors of:

- amounts fetched for the livestock or produce the agent has sold on behalf of the vendor
- various expenses paid by the agent on behalf of the vendor such as freight or industry levies
- the agent's commission and any other charges the vendor may make for their selling services.

In the past, the agent may have advised the vendor in the following fashion:

> On 1/7/1999 we sold 10 bulls on your behalf for a total price of $9.000.
>
> We have paid freight costs on your behalf of $105.
>
> Our commission on the above sale is 180.
>
> Total costs and charges total $285.
>
> Please find enclosed our cheque for the net sale proceeds of $8,715.

The advent of GST brings with it a need to issue a formal tax invoice to the vendor for sales commission, as selling services are a taxable supply the GST registered agent makes to the vendor, and the vendor (where registered for GST) will need to hold a valid tax invoice from the agent. The vendor will use this to support anclaim for an input tax credit for these selling services, in the vendor's business activity statement (BAS).

Important information the agent needs to convey to the vendor is the amount of GST the agent has charged on the vendor's behalf for the stock or produce sold. This enables the vendor to record and bring to account their GST liabilities to us.

Finally, if the agent has incurred expenses on behalf of the vendor (such as freight) and has decided to hold the tax invoice on the vendor's behalf, the vendor will expect the agent to advise of this fact. This will facilitate the making of a claim by the vendor for an input tax credit on expenses incurred by the agent on the vendor's behalf.

Bearing in mind these considerations, the basic account sales documentation can be expanded to something along the following lines:

On 1/07/2010 we sold 10 bulls on your behalf for a total price of which included GST of $920 we charged on your behalf.	$10,120
We have paid freight costs on your behalf of which included GST of $10.	$110*
*We hold a tax invoice on your behalf for this expense.	
Our commission (see tax invoice below) on the above sale is	198.
Total costs and charges	$308
Please find enclosed our cheque for the net sale proceeds of	$9,812

Tax invoice
Date of issue: 02/07/2010
Supplier: Acme Livestock Agents, ABN xx xxx xxx xxx
Recipient: A & B Taxpayer, ABN yy yyy yyy yyy
Our commission payable on sale detailed above: $198 (includes GST of $18)
This amount has been deducted from your gross sale proceeds, as shown above.

Agents are free to choose their own setting out and details in documentation advising the vendor of what has been sold on their behalf, and of expenses paid on behalf of the vendor. Of course the information should not be presented in a way that might mislead the vendor as to their taxation liabilities or entitlements.

On the other hand, there are specific requirements for **tax invoices** prescribed in the GST legislation. It should be noted that an agent's tax invoice to a vendor should only include supplies made by the agent to the vendor and not expenses merely incurred by the agent on behalf of a client. Rural stock and station agents should already be aware that the following information needs to be able to be clearly ascertained on tax invoices they issue for their selling services (commission):

- that the document is intended as a tax invoice, such as showing the words 'tax invoice' prominently
- identity of supplier, ABN of issuer of tax invoice
- if for an invoice amount of $1,000 or more, the identity or ABN of the recipient
- the price for the supply
- if the tax invoice is for one or more taxable supplies only, and the amount of GST payable on the supply or supplies is exactly one-eleventh of the total price for the supply or supplies, the tax invoice must contain:
  - (a) a statement to the effect that the total amount payable includes GST for the supply or supplies
  - (b) the total amount of GST payable.

The matter of tax invoice requirements has been discussed more fully at 4.3.1 (tax invoice), 4.1.4 (agent/vendor tax invoice) and 4.4.4 (recipient created tax invoice), which include some examples of tax invoices. An alternative example of account sales documentation agents may choose to adopt appears below. The second part of the following account sales documentation consists of notes for agents.

***sample document** Acme Livestock Agents*

ABN: xx-xxx-xxx-xxx

Vendor:	J. Williams	2 January 2011
	'Carisbrook'	
	Kingsville, Tasmania	

Vendor account statement

Gross sales

Date	Description	Value	GST	Price
	Taxable supplies:			
13/12/2010	1 steer @ $275	$275.00	$27.50	$302.50
14/12/2010	1 heifer @ $255	$255.00	$25.50	$280.50
	Sub-total	$530.00	$53.00	$583.00
	GST-free supplies:			
15/12/2010	100 bags carrots @ $6.50/b	$650.00	Nil	$650.00
15/12/2010	96 cartons cauliflowers @ $10.00/c	$960.00	Nil	$960.00
	Sub-total	$1610.00	Nil	$1610.00
Gross sales		**$2140.00**	**$53.00**	**$2193.00**

Note:

In completing your BAS, the figures above may be relevant for the 'Supplies you have made' and the figures below for the 'Acquisitions you have made'. (1)

Expenses paid on your behalf

Date	Description	Value	GST	Price
	*Acquisitions that included GST:			
11/12/2010	Farming organisation fees	$19.40	$1.94	$21.34
	Sub-total	$19.40	(2) $1.94	$21.34
	Acquisitions not subject to GST:			
11/12/2010	Cattle transaction levy	$34.50	Nil	$34.50
	Sub-total	$34.50	Nil	$34.50
Total expenses		$53.90	$1.94	**$55.84**

*Tax invoices are held by us for these amounts.(3)

Our charges for selling services

Tax invoice(4)		Date of tax invoice(5):	2/1/2011	
FROM:		Acme Livestock Agents**(6)**	TO: J. Williams**(7)**	
ABN: xx-xxx-xxx-xxx			ABN: yy-yyy-yyy-yyy	
Date	**Description**	**Value**	**GST**	**Price**
15/12/2010	Commission	$189.10	$18.91	$208.01
Total		$189.10	**(8)** $18.91	$208.01

Net sale proceeds

Gross sales (as above)		**$2193.00**
Less: total expenses paid on your behalf (as above)	**55.84**	
charges for selling services (as above)	**208.01**	**263.85**
Net sale proceeds		**$1929.15**

Notes for agents

- The GST shown as part of the gross sale proceeds is payable by your client, the vendor (unless a non-resident) and the corresponding taxable supplies need to be included in your client's BAS for the relevant tax period.
  Note: When completing the GST section of the BAS for a particular tax period, the vendor should ensure that supplies attributable to that tax period are included. The vendor may need to consider whether they account on a 'cash' or 'non-cash' basis, and the date on which they become aware of the supplies made on their behalf (Goods and Services Tax Ruling GSTR 2000/29, paragraphs 87 - 91).
- This is the GST included in the expenses paid on behalf of the vendor. The vendor may be able to claim these input tax credits for the relevant tax period. If an acquisition exceeds $82.50, the vendor, or the agent, will need to hold a valid tax invoice. The agent may choose to retain a valid tax invoice on behalf of the vendor and inform the

vendor of this fact. Alternatively the agent may choose to forward the tax invoice to the vendor.

- This statement should only be included if relevant tax invoices are held.
- The document must clearly show that it is intended to be a tax invoice, such as including the words 'tax invoice' prominently at the top. This tax invoice is for the supply by the agent, of selling services, to the vendor. Details shown on other parts of the document are merely for the client's information and the content and setting out of those parts is at the discretion of the agent.
- The date of issue of the tax invoice needs to be able to be clearly ascertained.
- The agent's identity and ABN must be able to be clearly ascertained on the tax invoice that is issued to the client for the selling services.
- Where a tax invoice is for a total price of $1 000 or more, the recipient's identity or ABN must be able to be clearly ascertained.
- This is the GST included in the price charged by the agent to the client for selling services. The client may be able to claim these services as creditable acquisitions in their BAS for the relevant tax period.

4.6.2 - Account sales documents for stock and station agents

Question

Stock and station agents have been advised that for GST they must separate vendor expenses into expenses merely paid for by the agent on the vendor's behalf, and actual professional charges by the agent, such as commission. What guidance is available from the ATO on this and what will be the repercussions if an agent misclassifies a selling service item as an expense paid on behalf of the vendor, or vice versa?

For the source of the ATO view, refer to GSTR 2000/37 - *Goods and services tax: agency relationships and the application of the law*

Answer

Stock and station agents traditionally advise clients (either buyers or sellers) of two broad categories of expenses or costs:

- various expenses paid by the agent on the client's behalf (such as freight organised by the vendor and paid for by the agent)
- the agent's commission and any other professional charges the agent may make in connection with their buying or selling services.

The first category of expenses pass through the stock and station agent's books merely as amounts paid on behalf of the client and then reimbursed by the client. They typically include amounts such as industry levies, statutory charges, and freight organised or directed by the client but initially paid for by the agent. These sorts of amounts are not 'supplies' made by the agent. The agent acts merely makes a payment. The 'supply' is between the client and some third party.

The agent will not need to be involved in the GST aspects of these expenses (for resident clients) other than to ensure that where needed the agent obtains a tax invoice from the supplier if the client has not done so. If the agent chooses to hold a tax invoice on behalf of a client or clients, the client or clients may need to be advised of this fact in order for them to be able to include appropriate claims for input tax credits in their Business Activity Statements. Under section 153-5 of the *A New Tax System (Goods and Services Tax Act 1999* (GST Act), either the agent or the client can hold a tax invoice for an acquisition the agent makes on behalf of the client.

The second category of expenses are supplies made by the agent to either the buyer or seller in the agent's professional role as a facilitator of purchases and sales. The predominant supply an agent makes is the selling service known as 'commission'. This will typically be calculated as a percentage of the value of the items bought on behalf of the buyer or sold on behalf of the seller. The amount charged as 'commission' may be intended to cover a myriad of minor expenses such as telephone and postage as well as the time and other resources allocated to the transaction. Sometimes the underlying expenses may be significant enough to be listed separately and to be separately charged (for example, photocopying). These charges are not in the nature of precise reimbursements but rather the professional charge the agent deems it reasonable to request the client to pay. As these amounts are part of the agent's supply of selling services, the GST registered agent needs to include GST in the price for these services and to include these supplies in the agent's own BAS.

These matters are discussed in some detail in Goods and Services Tax Ruling GSTR 2000/37 - *Goods and services tax: agency relationships and the application of the law*.

Most expenses are readily classified as expenses paid on a client's behalf or alternatively as professional charges, but some expenses may be difficult to classify. For example, advertising costs may generally form part of professional services but if a vendor made a specific request that an advertisement with a particular wording be placed in a particular publication and it was agreed the vendor would reimburse the actual expense, the agent may need to treat payment for that specific advertisement as a mere expenses payment on behalf of the vendor.

There are potential repercussions if an agent misclassifies an expense. These repercussions can go in two opposing directions:

> **Inclusion in the agent's tax invoice of a supply that is not the supply of the agent but of a third party.**
>
> This may invalidate the total price shown on the tax invoice for taxable supplies of the agent. It may cause an overstatement of the agent's GST liability and PAYG instalment income.
>
> **Inclusion of an amount that is part of the agent's professional selling services in advice given to the client about expenses paid on a client's behalf.**
>
> This may cause an overstatement of amounts a client is entitled to claim in reliance on section 153-5 of the GST Act. It may result in the overclaiming by an agent of input tax credits on behalf of a non-resident client under section 57-10 of the GST Act. It may cause an understatement of the agent's GST liability, and the agent's PAYG instalment income.

Whilst the ATO may be in a position in some cases to exercise a discretion under section 29-70 of the GST Act to treat a document as a tax invoice that is not a tax invoice, the agent cannot assume the Commissioner will exercise such a discretion. Each case would need to be treated on its merits.

The policy of the ATO in the realm of penalty taxes will evolve and this issue will not attempt to specify what that policy is currently or can be expected to be in the future in the realm of GST, PAYG instalment income, or income tax. However it is obvious that a stock and station agent who fails to classify correctly those transactions that are clearly of one kind rather than the other, or who fails to seek advice concerning doubtful or contentious transactions, is likely to be in a less favourable position than one who has established a proper system for classifying the expenses and obtaining advice.

Enquiries concerning the categorisation of expenses in relation to agency as it specifically affects GST can be directed to a GST technical area of the ATO. If a Ruling is required on whether an income or expenditure item is the assessable income or allowable income tax deduction of the agent (rather than of their client) the enquiry can be directed to an ATO income tax technical area.

4.7 Adjustment note

4.7.1 - Can the recipient of a supply issue an adjustment note?

Question

Can the recipient of a supply issue an adjustment note?

Non-interpretative – straight application of the law

Answer

Yes, when the tax invoice issued for that supply was a recipient created tax invoice (RCTI).

Explanation

Paragraph 29-75(2)(b) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) provides that where the tax invoice in relation to a supply would have been a recipient created tax invoice, the adjustment note must be issued by the recipient of the supply.

5 Joint ventures

5.1 Commercial fishing

5.1.1 - Commercial fishing and GST joint ventures

Question

How do commercial fishing arrangements apply to GST joint ventures?

For the source of the ATO view, refer to:

- GSTR 2004/2 - *Goods and services tax: What is a joint venture for GST purposes?*
- GSTD 2004/2 - *Goods and services tax: Are all supplies made by the entity nominated as the joint venture operator to entities that are participants in the GST joint venture to be treated as if they are not taxable supplies?*

Answer

For further information, refer to the following documents:

- Goods and Services Tax Ruling GSTR 2004/2 - Goods and services tax: What is a joint venture for GST purposes?
- Goods and Services Tax Determination GSTD 2004/2 - Goods and services tax: Are all supplies made by the entity nominated as the joint venture operator to entities that are participants in the GST joint venture to be treated as if they are not taxable supplies?

6 Land

6.1 Crown land

6.1.1 Second lease of crown land – GST status

Question

Where a piece of Crown land is leased for a second time will the supply of the second lease be exempt from GST under section 38-445 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)?

Non-interpretative – straight application of the law

Answer

Subsection 38-445(1) of the GST Act refers to certain supplies of land by the Commonwealth, States or Territories (the Crown). Accordingly, the exemption cannot apply to supplies such as sub-leases, transfers or assignments by persons other than the Crown. Additionally, subsection 38-445(2) of the GST Act makes it clear that this is a once only exemption so that, even if for some reason the land reverts to the Crown, the exemption cannot again apply to any subsequent supply by the Crown.

Explanation

Some relief in relation to subsequent supplies of land, the original supply of which was covered by section 38-445 of the GST Act, may be afforded by the operation of sections 38-480 (farm land) or 38-325 of the GST Act (going concerns). It is considered that the going concern provisions may apply to all the components of the supply of a business including land, whether owned or leased. However, it is recognised that the going concern provisions are often not applicable to land used for farming because farm land is regularly sold separately from other assets of the farm business (see section 38-480 of the GST Act).

6.1.2 - Sale of a farm with an area under licence

Question

What are the GST consequences on the sale of a farm that includes an area under licence from the Crown or a third party?

Non-interpretative – straight application of the law

Answer

Where a licence (such as grazing rights in a state forest) is transferred at the same time as a sale of farm land, it is considered that the licence is a separate supply from that of the land.

Explanation

Paragraph 9-10(2) (e) of the GST Act provides that 'a creation, grant, transfer, assignment or surrender of any right' is a supply. It is considered that licences of the kind referred to above would fall within this definition. Therefore, supplies of these rights will be taxable where all requirements of section 9-5 of the GST Act are met.

6.2 Farm land

6.2.1(a) - Sale of farmland – Section 38-480 of the GST Act

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

6.2.1(b) Sale of farm land - farm business v farmed continuously

Question

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

6.2.2 - Farmed for five years but not immediately prior to the sale

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

6.2.3 - Sale of farm land — temporary cessation of farming activity

Question

Is the sale of farm land GST-free if a farming business has been carried on for five years immediately prior to the sale, except for a break which occurs as a consequence of sale?

For the source of the ATO view, refer to GSTD 2011/2 - *Goods and services tax: can a 'farming business' be carried on, for the purposes of paragraph 38-480(a) of the A New Tax System (Goods and Services Tax) Act 1999, where there has been a cessation of routine farming activities by the supplier for a period of time as a consequence of a decision to sell the land?*

Answer

A temporary cessation in farming activities due to the sale of the farmland would not normally preclude the operation of section 38-480 of the GST Act. However, whether there has been a break in the carrying on of a farming business sufficient to preclude the operation of section 38-480 of the GST Act, in the five years preceding the sale will, in each case, be a question of fact.

Explanation

Carrying on an enterprise is defined in the GST Act. It includes doing anything in the course of the commencement or termination of the enterprise (section 195-1 of the GST Act).

6.2.4 - Documentary evidence – farming business

Question

What, if any, documentary evidence is necessary to show that the intention of a purchaser of farm land is that the farm land is to be used to carry on a farming business?

Non-interpretative – straight application of the law

Answer

The vendor should seek evidence to demonstrate that a reasonable enquiry has been made about the purchaser's intention. What is reasonable will depend on all the circumstances. Usually this will require the vendor to ask the purchaser whether or not there is an intention to carry on a farming business. The important factor to consider, in determining whether a supply of farm land is GST-free under section 38-480 of the GST Act, is the use of the land as opposed to the ownership of it. Therefore, the recipient of the supply need only intend that a farming business be carried on, on the land. Paragraph 38-480(b) does not require purchasers to carry on the farming business themselves.

In most cases if the vendor obtains a written statement or warranty from the purchaser stating the intention is that a farming business be carried on, then the vendor will be able to demonstrate that it has made a reasonable enquiry about the purchaser's intention, unless the vendor has reason to believe the information is incorrect.

Division 135 of the GST Act deals with adjustments in relation to the supply of a going concern (section 38-325) and farm land supplied for farming (section 38-480) and, amongst other things, applies Division 129 in relation to changes in the extent of creditable purpose. The vendor should note that the GST liability rests with the supplier and address intent and change of intent with the purchaser (recipient) of the farm land.

6.2.5 - Acquisition GST free – no farming business

Question

What are the GST consequences if the purchaser acquires farm land GST-free but does not actually carry out a farming business?

For the source of the ATO view refer to Issue 6.2.14 of this issues register

Answer

If the purchaser acquires farm land GST-free and subsequently changes the use of the land from farming to another use which involves supplies which are not solely taxable or GST-free, the purchaser will be required to make an increasing adjustment under Division 135 of the GST Act.

Division 135 of the GST Act provides for an adjustment where certain GST-free acquisitions are used to make supplies that are neither taxable nor GST-free. The adjustment is calculated by working out the proportion of all the supplies made through the enterprise that are neither taxable supplies nor GST-free supplies and applying that proportion to the amount of tax for which the supplier of the farm land would have been liable had the supply been a taxable supply.

Division 135 of the GST Act provides for adjustments both at the time of acquisition and for each adjustment period relating to the acquisition.

Example

Bill acquires farm land GST-free.

The purchase price is $500,000.

In addition to carrying on a farming business, he intends to build a residential premise for rent.

The rent will be input taxed and is likely to be 20% of all supplies.

Bill has an increasing adjustment:-

1/10 × $500,000 × 20% = $10,000.

Explanation

The recipient of a supply of a going concern has an increasing adjustment to take into account the proportion (if any) of supplies that will be made in running the concern and that will not be taxable supplies or GST-free supplies. Later adjustments are needed under section 135-10 of the GST Act if this proportion changes over time.

For more information on this topic, please refer to:

Issue 6.2.14 - Increasing Adjustment under Div 135

Issue 6.2.15 - Increasing Adjustment under Div 129

6.2.6(a) – Intent

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

6.2.6(b)- Exemption for supplies of farm land under section 38-480 of the GST Act

Question

Does exemption for supplies of farm land under section 38-480 of the GST Act depend upon the period of time that a purchaser intends that a farming business be carried out on the land?

Non-interpretative – straight application of the law

Answer

There is no provision in the legislation that specifies a period of time but if the purpose/use of the land changes, an adjustment may be necessary Refer to 6.2.5 above.

6.2.7 - Resale of farm land

Question

If a person has purchased farm land GST-free, how long does the land have to be used to carry on a farming business before it can be resold GST-free?

Non-interpretative – straight application of the law

Answer

Section 38-480 of the GST Act provides that a farming business must have been carried on, on the land for at least five years preceding the supply. It does not matter how long the purchaser has been carrying on the farming business as long as there has been at least five years of farming on the land preceding the supply. It is the use of the land that is relevant, not the ownership.

6.2.8 - Sale of Farm Land to Son/Daughter

This section has been moved to 6.6.1 - GST and Inter Family Transactions

6.2.9 - Sale of Farmland - Transitional

This question relates to a transitional issue that was more relevant at the outset of GST. The answer is displayed here for reference purposes.

Non-interpretative – straight application of the law

Question

What are the GST implications with regard to the sale of farm land if the contract is exchanged pre 1 July 2000 and the settlement takes place after 30 June 2000?

Answer

The ATO is of the view that, in general, real property will be made available on settlement. Real property supplied on or after 1 July 2000 will be subject to GST if the vendor is registered or is required to be registered for GST. However, section 38-480 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) may be applicable to treat the sale of farm land as GST-free. The supply of the farm land may also have been GST-free if the contract of sale met the conditions set out in section 13 of the GST Transition Act regarding agreements spanning 1 July 2000.

Explanation

Section 6 of the A *New Tax System (Goods and Services Tax Transition) Act 1999* provides:

- (1) This section sets out how to determine when a supply or acquisition is made for the purposes of this Act.
- (2).....

- (3) A supply or acquisition of real property is made when the property is made available to the recipient.
- (4).....
- (5).....

When is real property 'made available' or when is the time of supply?

Property Law provides that real property is supplied at the date of settlement when the title passes and the recipient has full use of the land. The ATO is of the view that, in general, real property will be made available on settlement.

Real property supplied from 1 July 2000 will be subject to GST if the vendor is registered or is required to be registered for GST. However, section 38-480 of the GST Act may be applicable to the sale of farm land.

Section 38-480 of the GST Act provides:

The supply of a freehold interest in, or the lease by an Australian government agency of or the long term lease of, land is GST-free if:

- the land is land on which a farming business has been carried on for at least the period of 5 years preceding the supply; and
- the recipient of the supply intends that a farming business be carried on, on the land.

The above section will be satisfied if a farming business as defined in section 38-475(2) of the GST Act has been carried on, on the land for at least five years before the supply and the purchaser intends that a farming business will continue to be carried on.

It does not matter who has been carrying on the farming business. It is the use of the land and not the ownership of it that is important.

In determining whether section 38-480 of the GST Act can apply each case will have to be examined on its own facts.

6.2.10 - Sale of moveable chattels

Question

Where a contract for the sale of farm land includes plant in the form of a chattel, would the chattel be considered a separate supply and subject to GST?

Non-interpretative – straight application of the law

Answer

The sale of chattels in a contract for the sale of farm land would be a separate supply as the chattels are not deemed, at law, to be part of the land. The sale would be a taxable supply and subject to GST if the criteria of section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) are met.

Depending on the extent of the chattels sold it may also be necessary to consider if what is being sold may be exempt from being a taxable supply under the going concern provisions in section 38-325 of the GST Act.

Explanation

General principles at law

Land includes things affixed to the land such as buildings and fences etc. The standard test for determining whether an object is a fixture is whether the object was affixed to land with the intention of becoming a permanent feature of that land. The necessary intention is to be ascertained by reference to the facts and circumstances surrounding the fixing of the object to the land.

Case References

Australian Provincial Assurance Co Ltd v Coroneo (1938) 38 SR (NSW) 700

6.2.12 - Security deposits and land sales

Question

Where a security deposit is paid on part of a land sale contract, when does the liability arise? The agreement is that the deposit may be forfeited if the purchaser does not complete the contract.

For the source of the ATO view, refer to:

- GSTR 2000/28 - *Goods and services tax: attributing GST payable or an input tax credit arising from a sale of land under a standard land contract*
- GSTR 2006/2 - *Goods and services tax: deposits held as security for the performance of an obligation*

Answer

When you make a taxable supply of land under a completed standard land contract, you attribute the GST payable to the tax period in which settlement occurs. This applies regardless of whether you account for GST on a cash basis or a non cash basis.

Division 99 of A New Tax System (Goods and Services Tax) Act 1999 (GST Act) applies to a deposit paid under a standard land contract. As a result, the payment of a deposit under a standard land contract will not trigger attribution of GST payable or input tax credits at the time the deposit is paid. This is the case if you account for GST on a cash or a non cash basis.

Specifically, under subsection 99-5(1) of the GST Act the deposit is not treated as consideration for a supply unless the deposit is forfeited because of a failure to perform the obligation or is applied as all or part of the consideration for a supply.

Under subsection 99-10(1) the GST payable on a taxable supply for which the consideration is a deposit that was held as security for the performance of an obligation, is attributable to the tax period during which the deposit is:

- forfeited because of failure to perform the obligation; or
- applied as all or part of the consideration for a supply.

This attribution rule overrides section 29-5 of the GST Act which is about attributing GST for taxable supplies.

Where you make a creditable acquisition upon a deposit being forfeited by you as a purchaser under a standard land contract and you hold a tax invoice, you attribute

the input tax credit to the tax period during which the deposit is forfeited. This applies if you account for GST on a cash basis or a non cash basis.

The Commissioner does not propose to make a determination under section 29-25 of the GST Act in relation to the attribution of GST payable and input tax credits for supplies and acquisitions made under a standard land contract subject to conditions precedent to performance.

Explanation

The ATO takes the view that Division 99 of the GST Act will apply if the deposit is paid to a property developer (say) even if the property developer can apply this money as he sees fit.

The GST treatment of a forfeited deposit turns on whether the forfeited deposit is properly characterised as consideration by the vendor for releasing a purchaser from an obligation to complete the purchase (this being a supply in accord with s 9-10(2)(e) of the GST Act. We do not accept that the forfeited deposit can be properly characterised as liquidated damages payable by the purchaser for breaching their contractual obligations to purchase the land.

These issues are considered in GSTR 2000/28 - *Goods and Services Tax: attributing GST payable or an input tax credit arising from a sale of land under a standard land contract.*

Please note that not all forfeited deposits will be subject to GST; the basic conditions of section 9-5 of the GST Act must still be met. For example if the taxpayer is not registered for GST or the receipt of the forfeited deposit is not in the course or furtherance of an enterprise carried on by the taxpayer, the forfeited deposit is not subject to GST.

Also refer to Goods and Services Tax Ruling GSTR 2006/2 - *Goods and services tax: deposits held as security for the performance of an obligation*.

6.2.13 - Leases to associates

6.2.13(a)

Question

Is a land owner who allows a related entity to conduct a farm business on the land required to register for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)?

For the source of the ATO view, refer to paragraph 306 of MT 2006/1 - *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number*.

Answer

This will depend on the facts in each case.

Explanation

A farm owner who allows a related entity to conduct a farm business on its land (for example, in the form of a lease or licence) may be carrying on an enterprise for GST purposes. However, the facts of each case will need to be considered to ultimately determine this issue. It is necessary to determine whether the farm owner is

conducting an enterprise for GST purposes. The term 'enterprise' under the GST Act has a wider meaning than 'business'. For this reason, it is not necessary that a landowner satisfies the 'business' test to determine whether they are carrying on an enterprise.

Subsection 9-20(1) of the GST Act provides that an enterprise is an activity, or series of activities, done:

- in the form of a business; or
- in the form of an adventure or concern in the nature of trade; or
- on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property; or
- by virtue of paragraph 9-20(1)(c) of the GST Act, the farm owner's activities may be the carrying on of an enterprise. *Miscellaneous Taxation Ruling MT 2006/1 The New Tax System: The meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number, provides some guidance on the interpretation of subsection 9-20(1) of the GST Act*.

Paragraph 306 of MT 2006/1 states:

> To be an enterprise the grant of a lease, licence or other grant of interest in property must be done on a regular or continuous basis. The grant need not be done on both a regular and a continuous basis. An activity will be continuous if there is no significant cessation or interruption to the activity.
>
> An activity is 'regular' if it is repeated at reasonably proximate intervals. The intervals need not be fixed. Whether an activity is repeated over time on a regular basis is a question of fact and degree.

The terms 'lease, licence or other grant of an interest in property' have their normal meaning. It is useful to remember the exclusion in paragraph 9-20(2) (c) of the GST Act which provides that an enterprise does not include an activity or series of activities done 'by an individual, or by a partnership (all or most of the members of which are individuals), without a reasonable expectation of profit'.

6.2.13(b)

Question

Where farms are leased to associates, (for example, a retired farmer allows his son to continue the farm business without a formal lease in return for income support) will it be a taxable supply and will the associate provisions of the GST Act deem a market value of consideration.

Non-interpretative – straight application of the law.

Answer

The answer depends on whether the lessor is registered or required to be registered for GST.

If the lessor is not registered or required to be registered for GST there will be no taxable supply where the land is provided to an associate. The lessor may, however, require an ABN as they may be considered to be carrying on an enterprise of supplying real property.

If the lessor is registered or required to be registered for GST, then the supply of land to an associate may constitute a taxable supply. If the consideration reflects the market value of the supply then the normal GST rules will apply.

If the consideration does not reflect the market value, both parties will have to consider the application of Division 72 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).

Section 72-5 of the GST Act states that a supply to your associate without consideration does not stop the supply being a taxable supply if:

- your associate is not registered or required to be registered; or
- your associate acquires the thing supplied otherwise than solely for a creditable purpose.

Section 72-10 of the GST Act deals with the value of taxable supplies made without consideration. It states that if a supply to your associate without consideration is a taxable supply; its value is the GST exclusive market value of the supply.

Similarly, section 72-70 of the GST Act deals with the value of taxable supplies where consideration is inadequate. It states that if a supply to your associate for consideration that is less than the GST inclusive market value is a taxable supply; its value is the GST exclusive market value of the supply.

Explanation:

Section 9-5 of the GST Act says that you make a taxable supply if:

- You make a supply for consideration; and
- The supply is made in the course or furtherance of an enterprise that you carry on; and
- The supply is connected with Australia; and
- You are registered or required to be registered.

However, the supply is not a taxable supply to the extent that is GST-free or input taxed.

Generally, if the lessor is not registered or required to be registered for GST then there is no taxable supply of the land to the close associate. There will be no GST implications on this transaction.

However, the lessor will need to consider whether or not they are carrying on an enterprise because they are granting an interest in real property. Paragraph 9-20(1)(c) of the GST Act says that an enterprise is an activity, or series or activities done on a regular or continuous basis in the form of a lease, licence or other grant of interest in property.

The lessor may require an ABN to avoid the application of the PAYG withholding provisions. Further guidelines about carrying on an enterprise are contained in Miscellaneous Taxation Ruling MT 2006/1 - *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number ('ABN')*.

If the lessor is registered or required to be registered then there may be a taxable supply of land between the lessor and the lessee. The normal GST rules will apply, provided that the consideration is based on commercial rates. The lessor will make a taxable supply to the lessee and will be liable for GST on that transaction. The lessee will be entitled to claim input tax credits for any creditable acquisitions that it makes.

Where the lessor is registered or required to be registered for GST and there is a lease, contract or agreement under which there is no consideration payable or where the consideration is not based on commercial rates, it will be necessary to consider the application of Division 72 of the GST Act.

This Division ensures that supplies to, and acquisitions from your associates without consideration are brought within the GST system and that supplies to your associates for inadequate consideration are properly valued for GST purposes. Associate is a defined term in section 195-1 of the GST Act. It has the meaning given by section 318 of the *Income Tax Assessment Act 1936*.

It is important to note that Division 72 of the GST Act will only apply if the recipient of the supply is not entitled to a full input tax credit, because either they are not registered or required to be registered or if the acquisition was not solely for a creditable purpose.

Section 72-5 of the GST Act states that a supply to your associate without consideration does not stop the supply being a taxable supply if:

- your associate is not registered or required to be registered; or
- your associate acquires the thing supplied otherwise than solely for a creditable purpose.

Section 72-10 of the GST Act deals with the value of taxable supplies made without consideration. It states that if a supply to your associate without consideration is a taxable supply; its value is the GST exclusive market value of the supply.

Similarly, section 72-70 of the GST Act deals with the value of taxable supplies where consideration is inadequate. It states that if a supply to your associate is for consideration that is less than the GST inclusive market value is a taxable supply; its value is the GST exclusive market value of the supply.

6.2.14 - Increasing adjustment under Division 135 of the GST Act

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

6.2.15 - Increasing adjustment under Division 129 of the GST Act

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

6.2.17 - Ownership of crops before harvest – growing crops

6.2.17(a)

Question

Do growing crops form part of the land in or on which they are growing?

For the source of the ATO view refer to Item 2.9.1 of this issues register

Answer

Generally, growing crops form part of the land to which they are attached and there is no need to distinguish between the land and the crops on the land. However, in some

circumstances growing crops are to be regarded as personal property rather than real property. In these circumstances, it will be necessary to view the growing crops separately from the land. The following explanation sets out when growing crops are to be viewed separately from the land.

Explanation

Growing crops will be regarded as personal property where both the following apply:

- they belong to a person other than the landowner, for example, they belong to a tenant and
- they fall within the description of fructus industriales (see below).

This distinction is designed to protect the interests of the tenant or other owner of the crop.

Additionally, growing crops of any kind which are agreed to be severed before sale or under a contract of sale, are also personal rather than real property and must be viewed separately from the land. This applies regardless of whether those crops, when in the ground, belong to the landowner or to some other person such as a tenant. For example, if a farmer grows crops on land which he owns and sells those crops to another entity under an agreement which requires the farmer to sever the crops before or under the sale, the growing crops are considered to be personal property (of that other entity) and must be viewed separately from the land.

Crops of any kind which have been severed from the land are also viewed separately from the land but this question only deals with growing crops which have not as yet been severed.

Fructus industriales

This category includes crops which are sown for the purpose of reaping, or planted for the purpose of gathering in the year they are planted and which are labour intensive to produce. Examples include grains and vegetables.

Fructus naturales

This category includes the natural growth of the soil such as grass, timber trees, fruit trees (and the fruit on fruit trees) and vines.

6.2.17(b)

Question

What are the GST implications when land on which there are growing crops is sold in circumstances which would satisfy the provisions of section 38-480 of the GST Act?

For the source of the ATO view refer to Item 2.9.1 of this issues register

Answer

The GST implications will depend on who is selling what to whom. It becomes a question of who has legal ownership of the crops when the land is sold. Tenant? Vendor? Purchaser? It will also depend on whether the circumstances are such that the crops are to be viewed separately from the land (see the answer to the previous question). The following explanation shows how these factors impact on the GST position.

Explanation

If the circumstances are such that the growing crops are not to be viewed separately from the land, the sale of the land by the owner, including the growing crops, will be GST-free.

If the circumstances are such that the growing crops are to be viewed separately from the land, only the land itself will be GST-free. Any disposition of the growing crops will need to be considered separately.

Where the circumstances are such that the growing crops are to be viewed separately from the land, the fact that land containing growing crops is sold does not mean that the growing crops themselves are sold. There may be no separate disposition of the growing crops. For example, where the growing crops on land belong to a tenant, that tenancy may simply continue under the new landowner. In that case the only supply being made is the supply of the land subject to the tenancy. The growing crops are not sold.

On the other hand, it may be the case that the contract for the sale of the land also provides for the growing crops to pass to the purchaser of the land. If that is so, it will be necessary to determine who owns the growing crops because it will be that person who is selling the growing crops to the purchaser of the land. This could be either a tenant or a person to whom the landowner or the tenant has previously agreed to sell the crops and that agreement required that the crops be severed prior to or under that contract of sale.

It may also be the case that the owner of the growing crops sells those crops to the owner of the land who in turn sells that land with the growing crops to a purchaser. In this case, there is a supply by the owner of the growing crops to the owner of the land. There is also a supply of the land, including the growing crops, from the land owner to the purchaser. The supply of the land including the crops may be GST-free under section 38-480 of the GST Act. The supply of the growing crops to the land owner will be a taxable supply if all the conditions set out in section 9-5 of the GST Act are satisfied.

If the circumstances are such that there are separate supplies of the growing crops and the land, it is pointed out that the growing crops are not accepted as being food within the meaning of that term in section 38-4 of the GST Act. Crops can only be accepted as food after they have been severed from the ground (provided they also meet the other requirements set out in section 38-4). Accordingly, while it may be necessary in some circumstances to view the growing crops and the land separately, those growing crops are not food because they are in fact still attached to the land.

6.2.19 – Inputs tax credits in relation to uncleared bushland section

Question

In operating a farming business, is a farmer entitled to input tax credits in relation to expenditure incurred on uncleared bushland sections of his farmland?

For the source of the ATO view, refer to paragraph 63 of GSTR 2006/4 - *Goods and services tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose.*

Answer

A farmer is entitled to input tax credits on expenditure incurred in relation to uncleared bushland sections of his farmland where that expenditure is in respect of a creditable or partly creditable acquisition.

Explanation

Goods and Services Tax Ruling GSTR 2006/4 - *Goods and Services Tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose*.

Provides some guidance in relation to whether expenses incurred in relation to uncleared bushland on farms will attract input tax credits. Paragraph 63 of GSTR 2006/4 states:

> Carrying on an enterprise includes those activities that you do in actually managing or conducting that enterprise. Certain acquisitions or importations relate to the carrying on of the enterprise as a whole and are not directly linked to the making of supplies but nonetheless they relate indirectly to all activities of the enterprise. These may be referred to as enterprise costs and may include costs such as compliance costs Australian Securities and Investment Commission (ASIC), GST or income tax obligations, directors' fees or the costs of maintaining a register of shareholders.

Similarly the provision of firebreaks, control of vermin, construction and repair of fences and other like expenditures may not be directly linked to the making of any supplies but nevertheless will still be creditable acquisitions, provided they are made in carrying on an enterprise. However, they will not be creditable acquisitions to the extent that they are of a private or domestic nature or are input taxed supplies made by your enterprise.

Examples

> *(A) A farmer controls lantana weed growing on uncleared bushland contained within his farm preventing its spread to cleared farming land. Although not directly connected to the making of any supplies, this expenditure on weed control has been incurred in carrying on the farming enterprise and will be a creditable acquisition.*
>
> *(B) A farmer has a hobby of bird watching and constructs a bird hide on uncleared bushland on his farm. This expenditure is of a private or domestic nature and will not be considered a creditable acquisition.*
>
> *(C) A farmer is required to maintain firebreaks on his farmland. The cost of clearing and maintaining the firebreak, while not directly related to the making of any supplies, is a cost incurred in carrying on the farming enterprise and will be a creditable acquisition.*

6.2.20 - GST-free farm land and costs incurred

Question

When farmland is sold GST-free, how are the costs incurred in the sale treated for GST purposes?

Non-interpretative – straight application of the law

Answer

In general, the costs of selling incurred in the sale of farmland are taxable supplies made to the vendor and as such are subject to GST.

Explanation

The sale of farmland is GST-free if the conditions of section 38-480 of *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) are satisfied.

However, the costs associated with the sale of farmland, for example the fees of real estate agents, auctioneers and solicitors are consideration for services supplied separately from the farmland. The parties providing and receiving these services are different to the parties transacting the sale of the farmland. These costs constitute separate supplies made to the vendor of the farmland by agents, auctioneers, solicitors etc and will generally be subject to GST. Section 38-480 of the GST Act, does not apply to the provision of such services.

If the services associated with the sale are provided in the course of a registered vendor's enterprise then input tax credits may be available to the vendor.

6.2.21 - Farm land set aside for conservation covenants

Question

A farmer registered for GST enters into a covenant, or other agreement, for part of the farmer's land to be set aside for conservation purposes. The farmer receives money, or other consideration, for supplying the land and the rights to the land.

Is the supply subject to GST?

Non-interpretative – straight application of the law

Answer:

Yes, in most cases the farmer will be making a taxable supply.

Explanation:

The exact nature of the supply under section 9-5 A New Tax System (Goods and Services Tax) Act 1999 (the GST Act), could take many forms. The supply could be an agreement not to farm the land for a number of years. It could also take the form of an agreement to allow the government (or conservation group) to plant trees on the land or whereby the land is leased to the government (or conservation group).

Because the farmer is registered for GST and the land has been part of the farmer's enterprise, the supply will generally be a taxable supply and subject to GST.

6.2.22 - Farm land – related entity

This section has been moved to 6.2.13(a) – Leases to Associates

6.2.23 - Sales of farmland – Section 38-480 of the GST Act

This section has been moved to 6.2.1(a) - Farm Land

6.3 Leases

6.3.1 - Definition of long term lease

Question

Does the reference to long-term lease in section 38-475 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) and section 38-480 of the GST Act (the farmland provisions), cover pastoral and other leases granted by Commonwealth, State or Territory governments in circumstances where those leases are granted for a period of less than 50 years but are either renewable, or can be converted to perpetual leases or freehold title?

Non-interpretative – straight application of the law

Answer

No. However, as a result of amendments made by the *Indirect Tax Legislation Amendment Act 2000*, the farmland provisions also apply to leases by Australian government agencies, irrespective of the term of those leases.

Explanation

Although it was not intended that the farmland provisions should apply to short term leases generally, land held under certain renewable leases is considered to be akin to land held under freehold title or long-term lease.

The amendments recognise this and ensure that leases by Australian Government agencies also qualify for exemption under the farmland provisions. The amendments do not contain any restriction on the term of such leases.

Assignment or transfer of leases

A view has been expressed that the wording of the farmland provisions is such that only the original grant of a lease is covered by the exemption. However, the ATO accepts that the exemptions conferred by the farmland provisions also extend to supplies by way of assignment or transfer of the types of leases referred to in those provisions.

The reason we have accepted that the farmland provisions also apply to supplies by way of assignment or transfer of the types of leases mentioned, stems mainly from the nature of the provisions themselves. For example, section 38-480 of the GST Act was inserted partly in recognition of the fact that the going concern provisions of section 38-325 would not apply if farmland was disposed of separately from the rest of the farming business. The going concern provisions deal with the transfer of property from one entity to another.

To restrict the operation of section 38-480 of the GST Act o leases of the kinds mentioned and not accept that assignments of those kinds of leases may also be GST-free, would be inconsistent with the inherent nature of the provision as a provision dealing with the transfer of interests from one entity to another.

Of course, although the necessity for section 38-480 of the GST Act may have partly arisen because of the particular way in which many farming businesses are disposed

of, provided the various requirements of the provision are met, it applies even if the land is being disposed of otherwise than as part of a sale of a farming business.

6.3.2 - Section 38-450 of the GST Act and short term leases

Question

When will a short-term lease of land by the Commonwealth, a State or a Territory be GST-free under section 38-450 of the *A New Tax System (Goods and Services) Act 1999* (GST Act)?

Non-interpretative – straight application of the law

Answer

A short-term lease of land on which there are no improvements by the Commonwealth, a State or a Territory will be GST-free under section 38-450 of the GST Act, provided the lease is subject to conditions that enable the recipient to have the grant converted to a freehold interest or long term lease of the land.

Section 38-450 of the GST Act only deals with short term leases as opposed to long term leases as defined in section 195 of the GST Act.

The subsequent surrender of the lease in return for a grant of a freehold interest or long term lease will also be GST-free provided the subsequent freehold interest or long term lease is GST-free under section 38-445 of the GST Act.

Explanation

A government may supply unimproved land by way of short-term lease, subject to conditions, the satisfaction of which will enable the recipient to be granted freehold title or long-term lease of the land.

Section 38-450 of the GST Act will allow the initial supply by a government of a short-term conditional lease over unimproved Crown land to be GST-free.

In situations where the short-term conditional lease is surrendered to the government in return for freehold title or a long term lease in the land, the surrender of the lease will be GST-free provided the subsequent freehold interest or long term lease is GST-free under section 38-445 of the GST Act.

6.3.3 - Farm land and terminated leases prior to sale

Question

Can section 38-480 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) apply to the sale of farmland where the land has been previously leased as a farm, and where the lease has terminated prior to the sale. From the time of termination of the lease to the sale of the farmland, no farming business has been carried on, on the land. The purchaser of the freehold farmland intends to carry on a farming business on the land.

Non-interpretative – straight application of the law

Answer

No.

Explanation

The requirements of section 38-450 must be satisfied for the sale of the farm to be GST-free.

What is important is the use of the land and not the ownership of it. As long as a farming business is being conducted on the land and has been so for at least five years immediately before the sale, it does not matter who has been conducting it. In addition, the purchaser must intend that a farming business will be carried on, on the land. It does not have to be the same farming business as that being conducted by the vendor.

In the above situation, as there has been no farming business carried on, on the farmland since the termination of the lease, paragraph 38-480(a) of the GST Act will not be satisfied. This paragraph requires that a farming business be carried on, on the land continuously for a period of 5 years immediately before the sale.

Therefore, even if a purchaser of the farmland intends to carry on a farming business on the land, section 38-480 of the GST Act cannot apply because subsection 38-480(a) of the GST Act will not be satisfied.

6.3.4 - Interpretation of the definition of long-term lease

Question

Will the requirement for the supply of a long-term lease to be for at least 50 years as described in section 195 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), be met where a lease with an original term in excess of 50 years is assigned part way through the original term and the time remaining until the cessation of the lease is less than 50 years?

Non-interpretative – straight application of the law

Answer

Yes

Explanation

When a lease is first granted, the period of time necessary to meet the requirements of the definition of long-term lease must be at least 50 years. The nature of an assignment is determined by the nature of the interest being assigned rather than the time remaining of the original grant.

Therefore, the assignment of a lease that was originally granted for at least 50 years will remain a long-term lease.

6.4 Residency

6.4.1 This issue was withdrawn 30 May 2002.

6.5 Fixtures and fittings

6.5.1 - Tenants fixtures

This issue has been removed. Refer to issue 6.5.2.

6.5.2 - Tenants fixtures

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

6.6 GST and inter family transactions

6.6.1 – Sale of farmland to son/daughter

Question

How does GST apply where I sell my farm land to my son/daughter, assuming the following:

The final consideration is determined,

Payments are periodical and spread over time (with payments able to be changed from time to time),

Property passes at the earlier of the full amount being paid, or upon death, it being bequeathed pursuant to the will.

Non-interpretative – straight application of the law

Answer

Due to the generality of the question the answer provided is in general terms.

If a farming business as defined in subsection 38-475(2) of the GST Act has been carried on, on the land for at least five years before the supply and the recipient (family member or otherwise) intends to carry on a farming business, section 38-480 of the GST Act will be satisfied and the supply will be GST-free.

It does not matter who has been carrying on the farming business. What is important is the use of the land, not the ownership of it and the purchaser must intend to carry on a farming business.

In determining whether section 38-480 of the GST Act can apply, each case will have to be looked at on its own facts. For example, in the hypothetical circumstances mentioned above, the contract of sale and other relevant documents would need to be examined before being able to reach a decision as to whether section 38-480 of the GST Act is applicable.

Another issue that would need to be determined is timing in relation to attribution rules. The above example does not give enough details to allow this matter to be fully considered. In addition, each case will need to be examined on its own facts.

6.6.2 - Enterprise, landowner and related entity

Question

Is a landowner who allows a related entity to conduct a farm business on the land carrying on an enterprise for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)?

Non-interpretative – straight application of the law

Answer

This will depend on the facts in each case.

Explanation

A farm owner who allows a related entity to conduct a farm business on its land (for example, in the form of a lease or licence) may be carrying on an enterprise for GST purposes. However, the facts of each case will need to be considered to ultimately determine this issue. It is necessary to determine whether the farm owner is conducting an enterprise for GST purposes. The term 'enterprise' under the GST Act has a wider meaning than 'business'. For this reason, it is not necessary that a landowner satisfies the 'business' test to determine whether they are carrying on an enterprise.

Subsection 9-20(1) of the GST Act provides that an enterprise is an activity, or series of activities, done:

- in the form of a business; or
- in the form of an adventure or concern in the nature of trade; or
- on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property; or
- by virtue of paragraph 9-20(1)(c) of the GST Act, the farm owner's activities may be the carrying on of an enterprise. *Miscellaneous Taxation Ruling MT 2006/1 The New Tax System: The meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian business number, provides some guidance on the interpretation of subsection 9-20(1) of the GST Act*.

Paragraph 306 of MT 2006/1 states:

> To be an enterprise the grant of a lease, licence or other grant of interest in property must be done on a regular or continuous basis. The grant need not be done on both a regular and a continuous basis. An activity will be continuous if there is no significant cessation or interruption to the activity.
>
> An activity is 'regular' if it is repeated at reasonably proximate intervals. The intervals need not be fixed. Whether an activity is repeated over time on a regular basis is a question of fact and degree.
>
> The terms 'lease, licence or other grant of an interest in property' have their normal meaning. It is useful to remember the exclusion in paragraph 9-20(2) (c) of the GST Act which provides that an enterprise does not include an activity or series of activities done 'by an individual, or by a partnership (all or most of the members of which are individuals), without a reasonable expectation of profit'.

6.6.3 - GST and inter family transactions

Questions 6.6.3 to 6.6.5 relate to the following basic circumstances. Each of those questions introduces variations to other factors such as which parties are registered and whether there is any consideration.

Facts

- Land is owned by a family company with all shares owned by Mum and Dad (landowner);

- Business is owned by a partnership comprising Mum, Dad and two children (business operator).
- The land is leased by the landowner to the business operator for a solely creditable purpose.

Assumption

It is assumed that only land for farming is being leased and that there are no residential premises included in the lease.

6.6.3(a)

Question

The landowner leases farmland to the business operator for no consideration. The landowner is not registered for GST. The business operator is registered for GST. Is the landowner required to be registered?

Non-interpretative – straight application of the law

Answer

No, the landowner is not required to be registered.

Explanation

Where the landowner is operating an enterprise (refer to section 9-20 of the GST Act), it will need to calculate current and projected GST turnover to determine whether or not GST registration is required.

In calculating current and projected GST turnover, sections 188-15 and 188-20 of the GST Act excludes supplies that are made for no consideration except those supplies without consideration that are taxable under section 72-5 of the GST Act.

Section 72-5 of the GST Act does not apply because the business operator, the recipient, is registered for GST and has acquired the land for a fully creditable purpose. As such, the supply is not included in turnover calculation.

In the absence of any other supplies by the landowner, the landowner is not required to be registered and the supply of land is not taxable as section 9-5 of the GST Act is not satisfied.

6.6.3(b)

Question

The landowner leases farmland to the business operator for no consideration. The landowner is not registered for GST. The business operator is registered for GST. Is the supply of land taxable?

Non-interpretative – straight application of the law

Answer

No, section 9-5 of the GST Act is not satisfied.

Explanation

Section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) provides:

> You make a taxable supply if:
>
> (a) you make the supply for consideration; and
>
> (b) the supply is made in the course or furtherance of an enterprise that you carry on; and
>
> (c) the supply is connected with Australia; and
>
> (d) you are registered, or required to be registered.
>
> However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

For there to be a taxable supply, all the requirements of section 9-5 of the GST Act must be satisfied. In this situation subsections 9-5(a) and (d) of the GST Act are not satisfied.

6.6.4

Question

The landowner and the business operator are registered for GST. The landowner leases farmland to the business operator for $75,000.

(i) Is there a taxable supply of land from the landowner to the business operator?

(ii) Can the landowner and the business operator group?

Non-interpretative – straight application of the law

Answer

(i) Yes, all requirements of section 9-5 of the GST Act are satisfied.

(ii) Yes, subsection 48-10.02(4)(b)(ii) of the *A New Tax System (Goods and Services Tax) Regulations 2019* (Regulations) is satisfied provided the membership requirements in Division 48 of the Regulations are met.

Explanation

(i) Is there a taxable supply of land from the landowner to the business operator?

All the requirements of section 9-5 of the GST Act, as stated in 6.6.3(b), will be satisfied and the supply of land will be a taxable supply.

As the business operator is registered for GST, the business operator will be entitled to claim input tax credits.

(ii) Can the landowner and the business operator group?

The Partnership

Section 48-10.02 of the Regulations sets out the requirements that must be satisfied for a partnership to be a member of a GST group.

Subsection 48-10.02(2) of the Regulations states that the partnership must satisfy subsections 48-10.02(4), (5), (6) or (7) of the Regulations.

Subsection 48-10.02(4) of the Regulations states the requirements for a partnership to group with a company. In particular, subsection 48-10.02(4)(b)(ii) provides that the partnership satisfies the requirements of it if, for at least one company that is a member of the GST group, the membership of a company with more than one member consists only of partners in the partnership, or family members of the partners, in a way that ensures that at least two partners are represented, either personally or by a family member. These requirements have been met.

The Company

Paragraph 48-15(1)(c) of the GST Act specifies when a company with more than one member may group. In this scenario, the requirements of the subsection are met. Provided membership requirements of section 48 of the GST Act are met, the landowner and business operator may group.

6.6.5

Question

The landowner and the business operator are registered for GST. The landowner leases farmland to the business operator for no consideration.

Is there a taxable supply by the landowner?

Non-interpretative – straight application of the law

Answer:

No, Section 9-5 of the GST Act is not satisfied.

Explanation:

There is no taxable supply by the landowner. A taxable supply is defined in section 9-5 of the GST Act, which is reproduced in 6.6.3(b). This transaction will not satisfy section 9-5 of the GST Act because there is no consideration for the supply.

Section 72-5 of the GST Act, which deals with supplies without consideration to associates, will not operate to make the supply a taxable supply because the recipient is registered and is leasing the land for a fully creditable purpose.

7 Livestock

7.1 Cattle

7.2 Game

7.2.1 - Game carcasses

Question

Will the supply of game carcasses from a harvester to a wild game processor be subject to GST?

Non-interpretative – straight application of the law

Answer

Yes.

Explanation

The supply of food for human consumption is GST-free under conditions laid down in Subdivision 38-A of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act).

Section 38-4 of the GST Act states:

(1) Food means any of these, or any combination of any of these:

(a) food for human consumption (whether or not requiring processing or treatment);

(b) ingredients for food for human consumption;

(c) beverages for human consumption;

(d) ingredients for beverages for human consumption;

(e) goods to be mixed with or added to food for human consumption (including condiments, spices, seasonings, sweetening agents or flavourings);

(f) fats and oils marketed for culinary purposes;

but does not include:

(g) live animals (other than crustaceans or molluscs); or

(h) unprocessed cows milk; or

(i) any grain, cereal or sugar cane that has not been subject to any process or treatment resulting in an alteration of its form, nature or condition; or

(j) plants under cultivation that can be consumed (without being subject to further process or treatment) as food for human consumption.

(2) Beverage includes water.

In addition the fact sheet, GST on livestock and game sales (NAT 3508) has been released by the ATO. One of its main functions was to explain when meat becomes food for GST purposes.

In accordance with the legislation and the supporting fact sheet a carcass is considered food for human consumption once an authorised person has inspected it

and either stamped or passed it as food for human consumption (in accordance with Federal, State or Territory law).

Prior to this point livestock/carcasses are not considered to be food for human consumption and will be subject to GST.

In relation to the purchase of game carcasses by a game processor, the carcasses have not been inspected and either stamped or passed as food for human consumption by an authorised person.

Therefore, at the time of supply of game carcasses to a game processor, they are not food for human consumption and the supply will be subject to GST.

The accreditation of the chiller box operators and harvesters relate to the receipt of carcasses **intended** as food for human consumption. This can be distinguished from **inspection and passing** (by an authorised person) of meat for **actual** human consumption.

7.3 Horses

7.4 Levies

7.4.1 - Livestock Transaction Levies

Question

What is the correct treatment in relation to GST and the deduction of livestock transaction levies?

Non-interpretative – straight application of the law

Answer

These levies are calculated on the value of the product. They are then deducted from the price of the product. The price is GST-inclusive.

Explanation

The primary industry levies on livestock are imposed under the *Primary Industries (Excise) Levies Act 1999*. Livestock levies become payable on or after the sale of livestock and are deducted from the GST inclusive price of the livestock. Most of the primary industry levies are imposed on a volume basis not a value basis.

The levies themselves are not subject to GST as they fall within the regulations made for the purpose of section 81-15 which prescribes fees and charges that do not constitute consideration.

For the treatment of fees and charges under Division 81 refer to - *GST treatment of Australian fees or charges under Division 81 of the A New Tax System (Goods and Services Tax) Act 1999*.

For example:

A farmer sells 10 head of cattle to a meat processor

Sale of 10 head of cattle @ $300/head	$3,000
GST 10%	$ 300
GST Inclusive Price	$ 3,300

less livestock transaction levy @$3.50/head	$ 35
Amount payable to the farmer by the meat processor	$ 3,265

In the example above, the farmer will be liable to remit $300 to the Australian Taxation Office. The purchaser on making a creditable acquisition may be entitled to an input tax credit of $300.

7.4.2 - Rural Lands Protection Board (RLPB) rates

Question

Will Rural Lands Protection Board (RLPB) rates that apply on the basis of the number of stock carried on farms be GST free?

Non-interpretative – straight application of the law

Answer

Yes.

Explanation

These levies will not be subject to GST since payment, or the discharging of a liability to make a payment of the levy, is not the provision of consideration under Division 81.

For more information refer to PS LA 2013/2 (GA) - *GST treatment of Australian fees or charges under Division 81 of the A New Tax System (Goods and Services Tax) Act 1999*.

7.5 Sales

7.5.1 - Livestock, game and carcasses

Question

How does GST apply to livestock, game and carcasses sales?

Non-interpretative

Answer

Please refer to the fact sheet GST on livestock and game sales (NAT 3508).

7.20 Sundry

7.20.1 - Importation of fresh or frozen animal semen

Question

What is the GST treatment on the importation of frozen/fresh animal semen?

Non-interpretative – straight application of the law

Answer

The importation of frozen and fresh semen is subject to GST upon importation. Subsequent importations of semen supplied free of charge under warranty are non-taxable importations (not subject to GST).

Explanation

Frozen and fresh semen is generally supplied in the first instance by overseas stud farms and breeders, with freight, packaging and handling charges paid by the overseas supplier. A fee for the supply of the semen is payable upon confirmation of a successful insemination, however it is not uncommon for an animal to be inseminated several times before a positive result is achieved.

The Australian Customs Service (Customs) has advised that the valuation of the semen at importation is based on the actual price paid or payable. This means that the customs value is based on the transaction value for the importation, which is the value agreed (contracted) when the order was placed for the semen.

The semen is subject to GST and the amount of GST payable on this taxable importation(s) is defined in Section 13-20 of *the A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) as:

> '(1) The amount of GST on the taxable importation is 10% of the value of the taxable importation.
>
> (2) The value of a taxable importation is the sum of:
>
> – the customs value of the goods imported; and
>
> – the amount paid or payable;
>
> ○ for the international transport of the goods to their place of consignment in Australia; and
>
> ○ to insure the goods for that transport; to the extent that the amount is not already included under paragraph (a);and
>
> – (c) any customs duty payable in respect of the importation of the goods;....'

In the case of an unsuccessful insemination(s), then a replacement/subsequent batch of semen will usually be supplied 'free of charge'. The GST payable on replacement importations of semen, which have been provided at no cost under warranty, will be zero because these replacement importations are non-taxable importations pursuant to Item 18B in the 4th Schedule to the *Customs Tariff Act 1995* and subsection 42-5(1) of the GST Act.

If the inseminated animal (for example a mare) slips or aborts its foal, or if the mare has a dead foal, then the owner will usually receive either a free return service, or a refund of the cost of the semen. If a refund is granted then the owner can apply to Customs for a refund of the GST paid.

7.20.2 Transferring livestock

This issue was withdrawn on 1 August 2002

8 Seafood/fishing

8.1 Fishing

8.1.1 - Live fish sales

Question

What are the elements required under GST to sell a fishing business as a going concern?

Non-interpretative – other references (see GSTR 2002/5 – *Goods and services tax: when is a 'supply of a going concern' GST-free?*).

Answer

Refer to: GSTR 2002/5 Goods and Services Tax: when is a 'supply of a going concern' GST-free?

8.1.2 – Energy Grants Credit Scheme and commercial fishing

Question

What are the special claiming arrangements for commercial fishing under the Credit Scheme?

Non-interpretative

Answer

Please refer to Fuel schemes essentials.

8.2 Seafood

8.2.1 - Live fish sales

Question

Are live fish (for example, Banded Morwong and Wrasse) which are sold for domestic consumption considered to be food for GST purposes and hence GST-free?

Non-interpretative – other references (see Detailed food list).

Answer

No. Please refer to Issue 2 of the Food Industry Partnership - issues register.

8.2.2 - Oyster spats

Question

Are supplies of oyster spat and adult oysters GST -free?

Non-interpretative – other references (see Detailed food list).

Answer

Please refer to Issue 22 of the Food Industry Partnership - issues register.

9 Timber

9.1 Acquisitions

9.1.1 - Are the supplies of timber between forestry companies taxable?

Non-interpretative – straight application of the law

Question

Are the supplies of timber between forestry companies taxable?

Background

Some forestry companies (mills) own timber plantations. They process their own logs but can only handle logs of a certain size. For example, one company may process large diameter logs while another only handles small diameter logs. These companies trade the logs that they cannot process with each other. The companies account on a non-cash basis.

Answer

Yes.

Explanation

The supplies of timber would be taxable if section 9-5 of the A New Tax System (Goods and Services Tax) Act 1999 (the GST Act) is satisfied.

Section 9-5 of the GST Act provides:

> You make a taxable supply:
>
> - you make the supply for consideration; and
> - the supply is made in the course or furtherance of an enterprise that you carry on; and
> - the supply is connected with Australia; and
> - you are registered, or required to be registered.
>
> However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

Supply

The definition of supply as provided for in section 9-10 of the GST Act is very broad and includes the supply of goods.

The provision of timber would fall within this definition, as a supply of goods under paragraph 9-10(2)(a) of the GST Act.

Consideration

A taxable supply must be for consideration, which includes everything that the supplier has received for the goods. Section 9-15 of the GST Act states consideration includes any payment, act or forbearance done in connection with the supply of the thing.

The return of timber or any payment in cash would be consideration for the supply of timber.

Provided that paragraphs 9-5 (b) - (d) of the GST Act are also satisfied, the supplies of the timber between the forestry companies will be taxable.

9.1.2 - Timber acquisitions

Question

Are the acquisitions of timber creditable acquisitions?

Non-interpretative – straight application of the law.

Background

Some forestry companies (mills) own timber plantations. They process their own logs but can only handle logs of a certain size. For example, one company may process large diameter logs while another only handles small diameter logs. These companies trade the logs that they cannot process with each other. The companies account on a non-cash basis.

Answer

Yes.

Explanation

The acquisition of timber by the forestry companies would be creditable acquisitions if section 11-5 of the GST Act is satisfied.

Section 11-5 of the GST Act provides:

> You make a creditable acquisition if:
>
> - you acquire anything solely or partly for a creditable purpose; and
> - the supply of the thing to you is a taxable supply; and
> - you provide, or are liable to provide, consideration for the supply; and
> - you are registered, or required to be registered.

Acquisition

Acquisition is defined in section 11-10 of the GST Act to include an acquisition of goods.

The acquisition of timber would satisfy this section.

Creditable purpose

Subsection 11-15(1) of the GST Act provides that a thing is acquired for a creditable purpose to the extent that it is acquired in the carrying on of an enterprise.

As the timber is acquired by the companies to be processed, the timber would be acquired for a creditable purpose.

Therefore, provided the other provisions of section 11-15 of the GST Act are met, the acquisitions of timber will be creditable acquisitions.

9.1.3 - Timber value

Question

What would the value of the timber be?

Non-interpretative – straight application of the law

Background

Some forestry companies (mills) own timber plantations. They process their own logs but can only handle logs of a certain size. For example, one company may process large diameter logs while another only handles small diameter logs. These companies trade the logs that they cannot process with each other. The companies account on a non-cash basis.

Answer

The value of the timber would be based on the GST inclusive market value at the time of supply.

9.1.4 - Non-cash GST liability and input tax credit entitlement

Question

When does the GST liability and input tax credits entitlement occur when a forestry company accounts on a non-cash basis?

Non-interpretative – straight application of the law

Background

Some forestry companies (mills) own timber plantations. They process their own logs but can only handle logs of a certain size. For example, one company may process large diameter logs while another only handles small diameter logs. These companies trade the logs that they cannot process with each other. The companies account on a non-cash basis.

Answer

Please refer to explanation below.

Explanation

Where the supplies are taxable supplies, each party will be liable for GST on the supply of timber that they make.

When a company accounts on a non-cash (accruals) basis, the following rules apply with regard to GST liability and input tax credit entitlement.

Subsection 29-5(1) of the GST Act states that GST payable on a supply is attributed to the tax period in which:

- any consideration is received for the supply; or
- an invoice is issued for the supply;
- whichever is the earlier.

Subsection 29-10(1) of the GST Act states that eligibility for an input tax credit arises in the tax period in which:

- payment is made for the supply; or
- an invoice was issued for the acquisition;
- whichever is the earliest.

In order to claim input tax credits, a tax invoice is required from the entity making the taxable supply, see paragraph 29-10(3)(a) of the GST Act.

9.2 Registration

9.2.1 – GST turnover and unregistered suppliers

Question

Where a supplier is unregistered, are the following disregarded for the purposes of section 188-25 of the GST Act in determining whether the supplier has a GST turnover which meets the registration threshold:

The sale to a single purchaser of:

(i) land with standing timber on the land at time of sale of the land;

(ii) land together with already felled timber;

grazing permits?

For the source of the ATO view refer to GSTR 2001/7 - *Goods and services tax: meaning of GST turnover, including the effect of section 188 25 on projected GST turnover*.

Answer

(a)(i) Land with standing timber

Until the timber is severed from the land it is considered to be part of the land. Provided the land is considered to be a capital asset, the proceeds from the sale will be excluded from the vendor's projected GST turnover. Please note, where the standing trees are acquired as trading stock, Section 188-25 of the GST Act will not apply.

In addition, if the sale is solely as a consequence of the supplier ceasing to carry on his enterprise or permanently reducing the size or scale of his enterprise, the proceeds from the sale of the timber and land will be excluded from the supplier's projected GST turnover.

Whether or not the timber is ready for harvest at the time of sale of the land will not affect the application of section 188-25 of the GST Act in respect of the sale. The important point is whether or not the timber is separate from the land at the time of the sale.

(a)(ii) Land together with already felled timber

Where the timber is felled and therefore severed from the land and is sold prior to the sale of the land, the supply of the timber will be considered to be a separate supply. The proceeds from the sale of the land (capital asset) will not be included in calculating the supplier's projected GST turnover. The proceeds from the sale of the timber will only be excluded from the calculation if the sale is solely as a

consequence of the supplier ceasing to carry on his enterprise or permanently reducing the size or scale of his enterprise.

(b) grazing permits

The proceeds from the sale of grazing permits will be excluded from the supplier's projected GST turnover as they are from the supply by way of transfer of ownership of a capital asset.

Explanation

Subject to any specific statutory provision to the contrary, anything growing on the land is considered to be part of the land. In Taxation Ruling TR 95/6 (HL), a number of issues concerning forestry operations are discussed. Trees form part of the land on which they grow and while standing do not constitute trading stock. However, trees on hand at the end of a year of income that have been felled for the purpose of manufacture or sale in the course of carrying on a business of forest operations constitute trading stock.

Capital assets are those assets that are used to yield profit. Unlike trading stock, capital assets are not bought and sold to generate a trading profit in the course of carrying on an enterprise.

Section 188-25 of the **A New Tax System (Goods and Services Tax) Act 1999** (the GST Act) provides:

In working out your projected GST turnover, disregard:

- any supply made, or likely to be made, by you by way of transfer of ownership of a capital asset of yours; and
- any supply made, or likely to be made, by you solely as a consequence of:
- ceasing to carry on an enterprise; or
- substantially and permanently reducing the size or scale of an enterprise.

This section provides that when calculating projected GST turnover, supplies that fall within paragraph 188-25(a) or paragraph 188-25(b) are not included.

Question (a) (i) and (ii)

Where land is sold with standing timber as a capital asset, paragraph 188-25(a) will apply and the proceeds of the sale will not be included in calculating the supplier's projected GST turnover. If paragraph 188-25(a) cannot be satisfied, paragraphs 188(b)(i) and (ii) need to be considered.

To satisfy sub-paragraphs 188-25(b)(i) or (ii), the sale of the timber and land must be solely due to the fact that the supplier is ceasing the business altogether or because the size and scale of the business is being permanently reduced. Only then will the proceeds of the sale not be included in calculating the supplier's projected GST turnover.

If the timber is severed and sold it is considered to be trading stock and the proceeds from the sale will be included in calculating the supplier's projected GST turnover. However, if the timber is sold solely as a consequence of the supplier ceasing to carry on his enterprise or permanently reducing the size or scale of his enterprise then the supply will not be included in the supplier's projected GST turnover.

Question (b)

As grazing permits are generally considered to be capital assets, paragraph 188-25(a) will usually apply and the proceeds of the sale will not be included in calculating the supplier's projected GST turnover.

For further information on GST turnover for GST purposes see: GSTR 2001/7 Goods and services tax: meaning of GST turnover, including the effect of section 188-25 on projected GST turnover.

10 Wool and shearing

10.1 Shearing

10.1.1 - Contractors tax invoice – full contract

Question

Does the contractor's tax invoice need to show cost of shearing and GST separately where shearing is undertaken on a full contract basis?

Non-interpretative – other references (see GSTR 2013/1 – *Goods and services tax: tax invoices*).

Background

Shearing contracts

There are four basic types of shearing operations (full contract, cost plus, levy and cocky).

1. Full contract

The contractor quotes a specific price per head to cover the provision of a shearing team. The contractor is the employer of each member of the team and covers them for workers compensation, remits PAYG and pays the required super contributions. (**Note:** PAYG replaced PAYE from 1 July, 2000)

The contractor provides in advance a quote for the work that is $3.70 per sheep.

If the contractor is providing machinery such as hand pieces, presses or grinders, ***this may be quoted as a separate item or covered in the cost per head.***

Answer

Where GST payable is exactly one-eleventh of the total price, the tax invoice must contain a statement that the total price includes GST or show the amount of GST payable.

Explanation

Subdivision 29-C of *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) deals with tax invoices and adjustment notes. Section 29-70 of the GST Act deals specifically with tax invoices and states:

(1) A tax invoice is a document that complies with the following requirements:

- it is issued by the supplier of the supply or supplies to which the document relates, unless it is a recipient created tax invoice (in which case it is issued by the recipient
- it is in the approved form
- it contains enough information to enable the following to be clearly ascertained
  - the supplier's identity and the supplier's ABN
  - if the total price of the supply or supplies is at least $1,000 or such higher amount as the regulations specify, or if the document was issued by the recipient-the recipient's identity or the recipient's ABN

- what is supplied, including the quantity (if applicable) and the price of what is supplied
- the extent to which each supply to which the document relates is a taxable supply
- the date the document is issued
- the amount of GST (if any) payable in relation to each supply to which the document relates
- if the document was issued by the recipient and GST is payable in relation to any supply-that the GST is payable by the supplier
- such other matters as the regulations specify.

- It can be clearly ascertained from the document that the document was intended to be a tax invoice or, if it was issued by the recipient, a recipient created tax invoice.

(1A) A document issued by an entity to another entity may be treated by the other entity as a tax invoice for the purposes of this Act if:

- it would comply with the requirements for a tax invoice but for the fact that it does not contain certain information
- all of that information can be clearly ascertained from other documents given by the entity to the other entity.

(1B) However, the Commissioner may treat as a tax invoice a particular document that would not, apart from this subsection, be a tax invoice.

Where GST payable is exactly one-eleventh of the total price, the tax invoice must either contain a statement that the total price includes GST or show the amount of GST payable.

Where the quoted cost of shearing includes provision of machinery etc in the price there is no need to show a separate line item for each GST component on the tax invoice. It will be sufficient to provide one GST amount on the invoice for the overall supply.

Note: GSTR 2013/1 -*Goods and Services Tax: tax invoices*

Examples of model tax invoices can be viewed at issues 4.3.1 (tax invoice), 4.1.4 (agent/vendor tax invoice) and 4.4.1 (recipient created tax invoice).

10.1.2 - Contractors tax invoice – cost plus

Question

How is the GST liability calculated on a 'cost plus' basis shearing contract?

Non-interpretative – straight application of the law

Background

Shearing Contracts

There are four basic types of shearing operations (Full contract, Cost plus, Cocky and Levy).

Cost plus

Under this method the Contractor provides a full team and is the employer of the team. The contractor is responsible for workers compensation, remitting PAYG, making superannuation contributions.

The contractor does not quote a set price before commencing the work. This may be because it is the first time the contractor has provided a team for a woolgrower or the woolgrower may require the team to carry out extra work such as fleece sampling and measurement.

Before work commences, the contractor explains the basis he will use to calculate his final account. The rate of pay for each worker and extra costs are specified. The contractors overheads and margin are then added on. This margin is usually specified as a cost per sheep and can range from 15 to 32 cents per sheep. The contractor provides a final account when shearing is completed.

Answer

The provision of a shearing team on a 'Cost Plus' basis will represent a taxable supply by the contractor to the woolgrower if the contractor is registered or required to be registered for GST. The method of calculating the contract amount and the timing of notification of the cost to the woolgrower does not change the fact that it is a taxable supply.

We understand that the contractor includes items such as cost of labour, workers compensation, superannuation, payroll tax, contractors overhead and margin in the contract. Although these items are used to calculate the contract price, they do not represent the supply that the contractor is making to the woolgrower. The supply is the sheep shearing and the consideration payable is the amount calculated using the individual items. The contractor is liable for GST on the taxable supply not on the components.

The contractor will be liable for GST, calculated on either the full contract or a per head basis, depending on the method chosen.

10.1.3 - Cocky shearing arrangements

Question

Is the employer liable for GST on the labour component of a 'cocky shearing' arrangement?

Non-interpretative – straight application of the law

Background

Shearing Contracts

There are four basic types of shearing operations (Full contract, Cost plus, Cocky and Levy).

Cocky Shearing

Under this method, the woolgrower employs the members of the team directly.

Answer

No.

Explanation

Generally, employees supply their labour to the employer and their wages represent consideration for that supply. However, subsection 9-20(2) of the GST Act ensures that employees are not considered to be carrying on an enterprise, therefore, there can be no taxable supply between employees and employers. This exclusion is contained in paragraph 9-20(2)(a) of the Act which states:

> However, **enterprise** does not include an activity, or series of activities, done:
>
> (a) by a person as an employee or in connection with earning withholding payments covered by subsection (4) (unless the activity or series is done in supplying services as the holder of an office that the person has accepted in the course of or in connection with an activity or series of activities of a kind mentioned in subsection (1))

Where the woolgrower employs the shearers there will be no taxable supply as the shearers are not conducting an enterprise. Note, however, that PAYG will apply to these payments.

10.1.4 - Levy shearing

Question

Is the contractor liable for GST on fees charged to woolgrowers under a 'levy shearing' arrangement?

Non-interpretative – straight application of the law

Background

Shearing contracts

There are four basic types of shearing operations (Full contract, Cost plus, Cocky and Levy).

Levy shearing

Under this method, the contractor acts as an employment broker and provides a team which is employed by the woolgrower.

The woolgrower is responsible for workers compensation, remitting PAYG and making superannuation contributions.

The contractor charges a fee or levy for his services.

Answer

Yes.

Explanation

The fee charged by the contractor for organising the shearing team will represent a taxable supply if the contractor is registered or required to be registered. The contractor will be liable for GST on the supply and will be able to claim input tax credits for any creditable acquisitions that are made in relation to that supply, if registered or required to be registered.

10.1.5 - Shearers food and accommodation

Question

Does GST apply on supplies of meals or accommodation to shearers by their employers?

For the source of the ATO view refer to GSTR 2012/6 - *Goods and Services Tax: commercial residential premises (in particular paragraphs 124, 239 and 240) and GSTR 2001/3 – Goods and services tax: GST and how it applies to supplies of fringe benefits*.

Answer

GST will generally apply where an employer is registered or required to be registered for GST and makes a supply of food to a shearer, and the shearer makes a payment for the supply.

In the case of a supply of accommodation, the GST treatment of the supply will depend upon whether the accommodation is provided in 'residential premises' or 'commercial residential premises'. Where the accommodation is provided in residential premises (other than commercial residential premises) GST will not apply. Where the accommodation is provided in commercial residential premises, GST will apply if the shearer makes a payment towards the supply.

Where the food or accommodation is provided free of charge, GST will generally not apply.

Explanation

Section 9-5 of *A New Tax System (Goods and Services Tax) 1999* (the GST Act) provides, broadly, that a supply is a taxable supply if it is for consideration, in the course of the employer's business, connected with Australia, and the employer is registered or required to be registered for GST. However it is not a taxable supply to the extent it is GST-free or input taxed.

The definition of supply in the GST Act is broad and includes a supply that constitutes a fringe benefit (including an exempt fringe benefit) made by an employer to an employee. Subsection 9-75(3) of the GST Act provides a special method for calculating the taxable value of such a supply. To determine the taxable value it is necessary to examine the definition of 'recipients contribution' in the *Fringe Benefits Tax Assessment Act 1986*. Paragraph (a) of that definition refers to 'consideration paid'.

It is found that supplies of food typically provided to shearers for the duration of a shearing 'shed' (and short-term accommodation provided in commercial residential premises where applicable) have a GST inclusive price equal to the amount, if any, paid by the shearer for the supplies.

Food that is paid for

Shearers may be employed under an award on a not found basis. This means they are responsible for their own food and accommodation. However, they may enter into an arrangement with their employer for food or accommodation to be provided, at a price agreed with the employer. If their employer is registered for GST their employer will generally be liable for GST based on the amount paid by the employee for the provision of the food.

Although the supply of food for human consumption is GST-free in many circumstances, it is not GST-free if it is food for consumption on the premises from which it is supplied (paragraph 38-3(1)(a)of the GST Act). Food includes beverages.

Shearers may be provided with meals in a kitchen or dining room, either formal or informal, or in the open air. Because the supply is intended for consumption at the place where it is provided, it is not GST-free.

Under the provisions of subparagraph 9-75(3)(a)(ii) of the GST Act, the GST inclusive price of the supply of the meals will be the amount the shearer pays for the meals.

Note that shearers employed on a found basis, generally make no payment for their food, as they are generally entitled to be provided with meals as a condition of their employment.

Accommodation that is paid for

Short-term accommodation is usually provided to shearers in residential premises (other than commercial residential premises) and consequently, the supply of the accommodation constitutes an input taxed supply of residential premises.

However, should the accommodation be provided in camp style quarters (see example 10 of GSTR 2012/6) or other types of premises that have the features of commercial residential premises and the shearer pays for the accommodation, the supply will be taxable. Where this is the case, under the provisions of subparagraph 9-75(3)(a)(ii) of the GST Act, the GST-inclusive price of the supply of the accommodation to a particular shearer will be the amount the shearer pays for the accommodation.

Note that shearers employed on a found basis, generally make no payment for their accommodation, as they are generally entitled to be provided with basic accommodation as a condition of their employment.

Food or accommodation that is provided free of charge (including food or accommodation provided free of charge to found shearers)

In some cases employers may provide food and/or accommodation to shearers free of charge, as an over-award benefit at the employer's discretion.

In other cases, employers may engage shearers on a 'found' basis, such that they are entitled to food and/or accommodation free of charge as an entitlement under an award. Examples of such awards are the Pastoral Industry Award 1998, and the Western Australia Shearing Contractors Award 1993. The Pastoral Industry Award 1998 states 'Found employees shall be employees who are supplied with up to 5 meals per day during the course of shearing or crutching, such meals to be provided by the employer together with suitable accommodation.' The rates of pay provided in these two particular awards for shearers employed on a Found basis are lower than the rates for employees engaged on a not found basis. The ATO considers that shearers engaged on a Found basis under these two awards do not pay for their meals and accommodation, other than indirectly through their labour.

Where the employer provides food and/or accommodation free of charge to employee shearers, the GST taxable value of those supplies, where applicable, will be nil, as the 'recipients contribution' within the meaning of subsection 9-75(3) of the GST Act is nil.

Supplies of food and/or accommodation to associates free of charge as an entitlement under a found award

The GST Act contains a special provision, section 72-70 of the GST Act, for supplies made to associates for less than market value. The found conditions of employment

specified in an award are available to shearers at large. Accordingly, employers engaging members of their family or other associates as employees on a found award basis, and supplying them free of charge as an entitlement under that award with a normal level of benefits available to non-associates, should not be affected by this special provision, and the GST taxable value will remain as nil.

Example

'Found' and 'Not Found' shearers in a joint mess.

A grazing partnership registered for GST employs six shearers under the Pastoral Industry Award 1998 *for five days of shearing on the partnership sheep property. Two of the shearers advise the partnership they will not need sleeping accommodation or breakfast or an evening meal, as they live within driving distance. The partnership engages these two shearers on a 'Not Found' basis under the Award and supplies each of them with morning and afternoon tea and lunch at an agreed price of $11 per day. The price includes any applicable GST.*

At the conclusion of the shed, the partnership pays these two shearers at the award rate for 'Not Found' employment. The partnership deducts the agreed amount of $11 per day from the wages in payment for the meals. The total deducted for meals for the five days is $55 per employee, a total of $110. The partnership, being registered for GST, will include the $110 in its partnership business activity statement. The partnership will be liable for GST of $10, being one-eleventh of the total price of $110.

The other four shearers wish to take all their meals at the shearing shed. The grazing partnership engages them on a 'Found' basis under the Pastoral Industry Award 1998 and supplies these four shearers with suitable basic accommodation in residential premises (other than commercial residential premises).

At the conclusion of the shed, the partnership pays these four shearers for the 5 days at the 'Found' rates specified under the Award. These rates are less than the 'Not Found' rates. The partnership cannot deduct from the wages of these four shearers any amount for the benefits of food and accommodation, as it was obliged to supply these benefits to these 'Found' shearers under the Award. The GST Act provides that the taxable value of the supplies of benefits of food to these four employees is based on the 'consideration paid' by these employees. The ATO considers there is no consideration paid, as these four shearers make no payment other than indirectly through their labour. The GST price and liability is accordingly nil for the supplies of meals to these four shearers and the supplies of the accommodation to them being input taxed, there is also no GST liability arising from these supplies.

When the partnership calculates its input tax credits, it can claim for its creditable acquisitions (of food etc) in relation to its provision of meals to all six employees. However, the partnership cannot claim input tax credits for acquisitions it makes in relation to providing the accommodation as this particular supply is input taxed. Had the partnership provided the accommodation in commercial residential premises, it would have been entitled to input tax credits for its creditable acquisitions in relation to providing the accommodation. It will make no difference whether the employees were employed on a 'Found' or a 'Not Found' basis.

Please note that from 19 December 2012 GSTR 2012/6 has replaced GSTR 2000/20. The view expressed in GSTR 2000/20 regarding 'employee accommodation' is not replicated in GSTR 2012/6 and the written guidance provided above incorporates this change (also see issue 20.8.1).

10.2 Wool

10.2.1 - Wool auctions pre 1 July 2000

Question

Wool is being sold at auction towards the end of June 2000. Will GST apply if payment is not made until after 30 June?

Non-interpretative – straight application of the law

Answer

Yes.

Explanation

The Australian Taxation Office (ATO) has been advised in relation to sales of wool by auction as follows:

- It is long-standing industry practice that wool is not available to be removed by the purchaser until it is paid for in full.
- Bidding is likely to be on a tax exclusive basis both before and after the commencement of GST.
- Normally payment is required to be made by a 'prompt date'. Late payments may be accepted at the discretion of the vendor.
- Precise terms of sale will be found in wool auction sales catalogues.

Goods and services tax (GST) is only payable on a supply to the extent that it is made on or after 1 July 2000. The time of supply is set out in section 6 of *A New Tax System (Goods and Services Tax Transition) Act 1999*. Where goods are not to be removed, the time of supply is 'when the goods are made available to the recipient'.

The ATO accepts that it is not necessary that the wool actually be removed, merely that it be available to be removed by the recipient. Based on representations made to the ATO it is understood that wool is not made available for removal until the purchaser has paid in full. Therefore, the time of supply for GST purposes is the date of payment.

Auctioneers may wish to announce the importance of payments being received by the vendor's broker on or before 30 June 2000. If a vendor is registered and accepts payment for auctioned wool after 30 June 2000, the vendor will become liable for GST on the supply and will need to charge the purchaser accordingly.

Registered purchasers paying after 30 June 2000 will need to hold a tax invoice before being able to claim any input tax credit on the purchase of the wool.

10.2.2 - Wool tax and GST application to wool sales

Question

How is GST calculated when Wool Tax is imposed on the same transaction?

Non-interpretative – straight application of the law

The Wool Tax Act was repealed on 14 Sep 2006. This issue previously stated:

Answer

There is no GST applied to the Wool Tax and no Wool Tax applied to the GST on the initial sale of wool.

Explanation

Section 81-1 of *A New Tax System (Goods and Services) Act 1999* (GST Act) provides that:

> 'GST applies to payment of taxes, fees and charges, except those taxes, fees and charges that are excluded from the GST by a determination of the Treasurer.'

Wool Tax has been excluded from the GST by the Treasurer's Determination, *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2007 (No.1)*.

Additionally, the following concession is provided by subsection 10(5) of the *Wool Tax (Administration) Act 1964*:

> '... the price of the supply of wool is taken not to include the net GST that is, or would be, payable by an entity making the supply.'

Therefore initial wool sales will have Wool Tax and GST levied separately.

In subsequent sales GST is simply calculated on the value of the wool sold. No adjustment is made for Wool Tax previously imposed.

An example to illustrate the levying of GST and Wool Tax in a purchase of shorn wool by a wool- dealer from a grower is as follows:

200 kg of wool @ $2.50/kg	$500.00
Plus GST @10%	$50.00
Less Wool Tax @ 3% of value of wool before GST (remitted to ATO by wool-dealer)	$15.00
Amount paid to Grower (*)	**$535.00**
(*) This amount may be reduced due to nominal transport charges, testing charges, etc.	

11 Government grants and payments

Many of the payments and grants referred to below were made under arrangements that had sunset clauses. Some refer to circumstances relating to the transition to GST on or about 1 July 2000. As a result some of these payments may have been either phased out or been replaced by other government programs. The answers are given here for historical purposes and to provide an understanding of the application of the GST legislation to similar payments that are made now or in the future.

Information regarding the programs currently available should be sought from the Department of Agriculture, Fisheries and Forestry (DAFF). Other state based grants information can be found at the relevant State Department of Primary Industries/Agriculture site.

It is important to appreciate that the GST treatment for one grant may differ from another even if they are part of the same government initiative package. Similarly it does not follow that because a grant may not be subject to GST that it will also not be subject to income tax. ATO decisions are based upon the facts in each particular case and if there are any doubts then a Private Ruling should be sought.

11.1 Grants

11.1.1 - How will grants be treated under GST?

For the source of the ATO view, refer to:

- GSTR 2012/2 - *Goods and services tax: financial assistance payments*
- GSTR 2019/1 *Goods and services tax: supply of anything other than goods or real property connected with the indirect tax zone (Australia)*
- MT 2006/1 - *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an ABN*
- TR 97/11 - *Income tax: am I carrying on a business of primary production?*

On 30 May 2012 the ATO issued a ruling on financial assistance payments – GSTR 2012/2 - *Goods and Services Tax: financial assistance payments*.

For a financial assistance payment (formerly known as a grant of financial assistance) to be consideration for a supply there must be a sufficient nexus between the financial assistance payment made by the payer and a supply made by the payee. This will depend on the particular facts and circumstances of each grant program.

The term grant is not defined and the general principles of the GST Act apply in determining whether GST is payable on a grant transaction.

GST is payable in respect of taxable supplies. Supplies made in connection with the receipt of a grant will be subject to GST where the grant represents consideration for a supply which is a taxable supply.

Grants will be subject to GST if the following four tests are satisfied:

- Is the grant consideration for a supply by the recipient to the grant provider?
- Is the supply to which the grant relates made as part of the recipient's enterprise?

- Is the supply for which the grant is paid connected to Australia?
- Is the recipient of the grant registered, or required to be registered, for GST?

A. Is the grant consideration for a supply by the recipient to the grant provider?

For the current ATO view about whether the financial assistance payment is consideration see paragraphs 100 to 114 of .

This part of the answer previously stated:

> The first test can be answered by considering whether a grant is conditional or unconditional. If the grant recipient undertakes or is required to do something in exchange for the funds this is a supply by the recipient for which the grant is consideration. The grant would therefore represent consideration for that supply. Conditional grants made to a registered entity will usually be subject to GST.
>
> While a gift to a non-profit body is not consideration and so not subject to GST, most grants are not gifts. As mentioned above, a gift is something that is given by a donor out of generosity or benefaction, made voluntarily, and with no material benefit provided to the donor as a result of the gift. Funding grants do not generally have this character.

B. Is the supply to which the grant relates made as part of the recipient's enterprise?

The second test asks whether the supply by the grant recipient is made in the course of the recipient's enterprise. Activities performed in the form of a business, adventure, or a concern in the nature of trade may fall within this test.

Hobby farmers by their very nature are not enterprises as explained further in MT 2006/1 - *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number* and TR 97/11 - *Income tax: am I carrying on a business of primary production?*

C. Is the supply for which the grant is paid connected to Australia?

The third test requires that the supply is connected with Australia. The supply of anything other than goods or real property is connected with Australia if the thing is done in Australia or is made through an enterprise carried on in Australia. The ATO has issued a ruling on the meaning of 'connected with Australia', - *Goods and Services Tax: supplies connected with Australia*.

D. Is the recipient of the grant registered, or required to be registered, for GST?

The last test requires the supplier to be registered, or required to be registered, for GST. Qualifying financial assistance payments made to registered entities will be subject to GST provided the payments are connected with Australia.

Further information on Grants can be found in:

Part 5 of the Charities consultative committee resolved issues document

The fact sheet: Grants and GST – Recipient created tax invoices (NAT 7038) was withdrawn on 12 December 2007.

11.2 Government Relief Payments

11.2.1 - Government relief payments for destruction of crops due to disasters

Question

Will government relief payments associated with the destruction of livestock, crops, etc., due to disasters, for example, bushfire, flood, oil spill, etc., be subject to GST?

Non-interpretative – straight application of the law

Answer

Payments of income support and interest rate subsidies from government relief programs to farmers will generally not be subject to GST. Payments in the nature of reimbursement grants to farmers under these programs will also generally not be subject to GST.

Explanation

Payments of income support and existing debt interest rate subsidies will not be subject to GST as the grant recipient is usually not making a taxable supply.

Most often the grant recipient is merely satisfying eligibility requirements that will either ensure they are entitled to the payments or not. Although there may be some expectation that the money will be used for certain purposes (for example, paying back loans), there is no legally binding obligation.

Under these circumstances the payments by government entities are therefore not consideration in return for a supply by the grant recipient. The grant recipient is therefore not making a taxable supply to the government in return for the payment and accordingly no GST is applicable to the transaction.

In the case of reimbursement grants, the grant recipient usually has expended the money and is seeking reimbursement only. This is not a taxable supply by the grant recipient and the grant will not be subject to GST.

A specific example of a government relief package, the Federal Government Flood Package, is discussed further at issue 11.4.1.

11.2.2 - For PAYG purposes how is the income from the forced disposal of livestock treated?

Does not relate to an indirect tax specific issue

Question

For PAYG purposes, how is the income from the forced disposal of livestock treated?

Answer

Income from the forced disposal of livestock can be returned over five years (under section 385-105 of the *Income Tax Assessment Act 1997*). Where this is the case only one fifth of the total profit from the sale is included in instalment income for the income year in which the disposal takes place. The remaining four fifths is statutory

income and is not included in the instalment income. The tax on this statutory income will be collected on assessment over the remaining four years.

11.3 Dairy

11.3.1 - Dairy Industry Restructuring Compensation Package

This issue is no longer relevant as the Dairy Structural Adjustment Program (DSAP) ceased in 2008. The issue previously stated:

Question

Will Dairy farmers be liable for GST on payments made under the Dairy Structural Adjustment Program and the Dairy Exit Program?

Non-interpretative – straight application of the law.

Answer

No.

Explanation

Payments made to Dairy farmers under either the Dairy Structural Adjustment Program (DSAP) or Dairy Exit Program (DEP) are considered to be grants of financial assistance. The GST treatment of grants is discussed in Goods and Services Tax Ruling GSTR 2000/11 Goods and Services Tax: Grants of Financial Assistance.

Paragraph 10 of the ruling states:

> GST is payable in respect of taxable supplies. Supplies made in connection with the receipt of a grant will be subject to GST where the grant represents consideration for a supply which is a taxable supply.

It is, therefore, necessary to determine whether Dairy farmers make a supply in relation to the payments under both DSAP and DEP.

Section 9-10 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) defines the meaning of supply. It says that a supply is any form of supply whatsoever and includes the creation, grant, transfer, assignment or surrender of any right.

However, Paragraph 33 of GSTR 2000/11 states:

> For there to be a supply of rights or obligations, such rights or obligations must be binding on the parties. The creation of expectations among the parties does not establish a supply. An agreement that does not bind the parties in some way would not be sufficient to establish a supply by one party to the other unless there is something else, such as goods or some other benefit, passing between the parties.

Dairy Structural Adjustment Program

The DSAP consists of payments from the Dairy Adjustment Authority (DAA) to dairy farmers. This is to assist them to adjust to a deregulated environment. DSAP payments are paid to dairy farmers who operate as various entities including sole traders, partnerships, companies and trusts. There are three types of payment under the scheme:

- standard payments,

- exceptional events supplementary payments, and
- anomalous circumstance payments.

In order to be eligible for standard payments, dairy farmers must hold an eligible interest in the enterprise at 6.30pm on 28 September 1999 and the enterprise must have delivered milk during the financial year beginning on 1 July 1998. Similar provisions apply in the case of exceptional events supplementary payments and anomalous circumstance payments. The main requirement placed on the recipients of these payments is that written claims contain enough information to enable the Dairy Adjustment Authority to determine eligibility for payment.

In the case of payments made under the Dairy Structural Adjustment Program (DSAP) no obligation is placed on the recipient.

Therefore, there is no supply.

Dairy Exit Program

The DEP payments are made to assist farmers who exit the dairy industry and are paid by Centrelink. In order to be eligible for payment the recipient must first have been granted a DSAP payment right. They were also required to sell their farm and exit the dairy industry. There was a requirement that the farmer remain outside the agricultural industry for five (5) years but this was not binding on the recipient of the payment.

The requirement to be excluded from an industry for a period of time is a restrictive covenant. If a restrictive covenant is enforced it will be a supply. However, in circumstances where the obligation is not binding, there is no supply.

In addition, under the DEP program the dairy farmers have already exited the industry and consequently the supply will not be made in the course or furtherance of an enterprise that they are carrying on. Therefore, it is considered that on this basis any obligation entered into in relation to the DEP program will not constitute a taxable supply.

11.3.2 - What is the income tax effect of the Dairy Structural Adjustment Program?

This issue is no longer relevant as the Dairy Structural Adjustment Program (DSAP) ceased in 2008. The issue previously stated:

Does not involve the interpretation of an indirect tax law.

Answer

Please refer to the following fact sheet on the Dairy Structural Adjustment Program:

Dairy Structural Adjustment Program

Acquisition and disposal of a payment right unit

Background

The Dairy Structural Adjustment Program (DSAP) Scheme was introduced to assist dairy farm enterprises to restructure their business following the deregulation of the dairy industry on 1 July 2000. Under the DSAP scheme, an entity meeting the eligibility criteria in respect of a dairy farm enterprise is granted the right to receive regular quarterly payments. A right to receive payments is known as a DSAP payment right.

Each DSAP payment right consists of a number of 'units'. Each unit has a face value of $32 and the registered owner of a unit is entitled to a $1 payment each quarter over an eight year period. These units can be transferred or sold among primary producers.

Are the quarterly payments assessable income?

Under section 75 of the *Dairy Industry Adjustment Act 2000* (DIAA 2000) the payments received by the entity to whom a payment right has been granted are to be taken to be subsidies under section 15-10 of the *Income Tax Assessment Act 1997* and are included in assessable income of that entity.

A subsequent owner of units is considered to have acquired an annuity in terms of section 27H of the *Income Tax Assessment Act 1936*. Regular payments arising from the annuity are assessable income. Where the annuity was purchased, a deduction is allowed in relation to the undeducted purchase price of the annuity.

Are the quarterly payments income from primary production?

The payments received by the entity to whom a payment right has been granted arise from ownership of the eligible dairy farm enterprise. These payments are considered income from primary production but only while the dairy farm enterprise continues to be carried on.

A subsequent owner of units has acquired an annuity. A subsequent owner has not been granted a payment right in respect of an eligible dairy farm enterprise. In this case, the payments are not regarded as income from the carrying on of a business of primary production.

What are the tax consequences of disposing of a payment right unit?

A payment right unit is an asset for capital gains tax purposes. An entity that disposes of a payment right unit makes a capital gain equal to the amount of the capital proceeds from the disposal less the cost base of the unit disposed of.

Generally, the capital proceeds are the amount received for the disposal of the units. Where units expire at the end of the eight year period the capital proceeds are likely to be nil. However, where an entity transfers units before expiry for no capital proceeds (or for capital proceeds in a non-arm's length transaction that are less or more than the assigned unit's market value), the capital proceeds are taken to be the market value of the units transferred. The market value of the units would be based upon the present value of the remaining income stream attached to the units.

For an entity to whom the grant was made, the cost base of the units is nil, except for any incidental costs. This means that the full amount of the capital proceeds (less incidental costs) would be included in assessable income as a capital gain in the year of transfer. This entity would normally be considered to have acquired the units 28 days after having received the Notice of Decision, in accordance with section 18 of the DSAP Scheme.

Where an entity disposes of the dairy farm enterprise and all its assets (including the units) and the sale price for the dairy farm enterprise does not specifically refer to an amount for the units, an apportionment of the full consideration received for the dairy farm enterprise needs to be made for the units.

Generally capital gains and capital losses can be offset against each other. In addition, a capital gain made by individuals or certain trusts on assignment of a unit held for at least 12 months would qualify for the 50% capital gains tax discount. However, the small business capital gains tax concessions would not apply because the payment right (as a form of financial instrument) would not be an active asset.

What are the tax consequences of acquiring a payment right unit?

An entity that purchases a payment right unit has acquired an asset for capital gains tax purposes. The amount given to acquire the units is the first element of the cost base. However, where a deduction has been allowed for the purchase price of the units (for example, the undeducted purchase price), the cost base of the units is reduced by the amount which has been allowed as a deduction. Therefore, in many cases, the cost base (and any potential capital loss upon expiry of the units) would be reduced to nil.

Where an entity does not pay an amount to acquire the units (for example, a gift), the entity is taken to have acquired the units at their market value at the time of acquisition. As no deduction is available for an undeducted purchase price of an annuity in these circumstances, there would be no reduction in the cost base when calculating any capital gain.

Example 1

Maids-A-Milken Pty Ltd was granted a payment right by the Dairy Adjustment Authority of $32,000. This payment right consisted of 1000 units with a face value of $32. Each unit entitles the holder to four quarterly payments of $1 over eight years.

Each payment received is a grant or subsidy and is included in assessable income in the year of receipt. For capital gains purposes, the cost base of the payment right is nil. If Maids-A-Milken does not sell any units, the units will expire when the last payment is made by the Dairy Adjustment Authority. Maids-A-Milken will have received the full value of the units as assessable income and nothing on disposal. Therefore, no capital gain or loss would arise.

On the other hand, should Maids-A-Milken decide to dispose of any or all of the units, a capital gain would arise. However, Maids-A-Milken may be entitled to offset this capital gain against existing capital losses.

Example 2

Daphne sells her dairy farm to Mario. Mario intends to carry on the dairy business previously conducted by Daphne. Mario purchases all the assets of the farm, including a payment right granted to Daphne by the Dairy Adjustment Authority. The sale contract does not apportion any value to individual assets, although the contract specifically includes the payment right that Daphne had been granted.

An apportionment of the total price paid by Mario to acquire the farm needs to be made to determine the purchase price for the units. The amount apportioned to the units should be so much of the total price as is reasonably attributable to the units and would be related to the market value of the units.

Example 3

Clyde was granted a payment right to the value of $100,000 by the Dairy Adjustment Authority in respect of an eligible dairy business he conducted. Clyde receives his payments for two years and then sells all of the units to Farmer Brown for $60,000.

Clyde is assessed on the income received during the two years as income from primary production. In addition, the $60,000 received for the disposal of the units is a capital gain (assuming no incidental costs). This capital gain can be offset against capital losses. He may also be entitled to a 50% discount on the capital gain.

Farmer Brown has purchased an annuity for $60,000. The payments will be included in Farmer Brown's assessable income upon receipt ($12,500 per annum) but a deduction will be available for the undeducted purchase price of the annuity ($10,000 per annum). Upon expiry of the units the cost base ($60,000) is reduced by the amount previously allowed as a deduction ($60,000). This reduces the cost base to nil. Because Farmer Brown receives nothing upon expiry of the payment right, he makes neither a capital gain nor a capital loss.

Example 4

Dave is a sharefarmer. He has been granted a payment right in respect of an eligible dairy farm enterprise. The land owner, Belinda, has also been granted a payment right. To fund improvements to the farm, Dave agrees to transfer some or all of his units to Belinda. Dave receives no consideration for the transfer of the units.

Dave has disposed of a valuable asset for no or inadequate consideration. He is treated as disposing of the units for market value, which would be the present value of the income stream attached to the units. As the cost base is nil, Dave will be subject to a capital gain which would be included in his assessable income in the year of disposal.

Belinda has acquired an annuity. The annuity payments are included in her assessable income in the income year they are received. As Belinda paid no purchase price to acquire the annuity, the undeducted purchase price of the annuity is nil. Accordingly, no allowable deduction would be available for the annuity payments.

However, Belinda has also acquired a capital gains tax asset. As Belinda did not purchase the units, she is taken to have acquired them at their market value at the time of acquisition. This is the cost base of the units. If Belinda keeps the units until they expire, a capital loss would arise as the cost base of the units would not have been reduced by an amount for the undeducted purchase price of the annuity attached to the units.

11.3.3 - Dairy deregulation

Does not relate to an indirect tax specific issue

Capital loss on quotas:

The legislation deregulating the dairy industry in Western Australia, Queensland and New South Wales has the effect of cancelling the existing quotas.

Accordingly, for cancelled quotas acquired after 19 September 1985, a capital loss equal to the cost base of the quota is made. No additional action is necessary to realise the capital loss. However, for quotas acquired before 20 September 1985 no capital loss is available.

If any compensation becomes payable for the cancellation of quotas the capital loss will be reduced by the amount of the compensation. The Dairy Structural Adjustment Program (DSAP) amounts and the Dairy Exit Payment (DEP) amounts (see background) are not compensation for the cancellation of the quotas.

Capital losses made from the cancellation of the quotas, as a result of the deregulation of the dairy industry, are made in the 2000-01 income year because the quotas are cancelled in that year.

Capital losses can only reduce current and future capital gains. There is no time limit by which the capital losses must be offset.

Questions and decision:

(a) (i) What happens to the quotas once the regulations are removed?

Decision:

Once the regulations are removed the quotas are cancelled.

Question:

(a) (ii) After deregulation by the States quotas will no longer exist. Does this mean that they have zero value and holders can realise a capital loss?

Decision:

For cancelled quotas acquired after 19 September 1985, a capital loss equal to the cost base of the quota is made. However, for quotas acquired before 20 September 1985 no capital loss is available.

Question:

(b) (i) Do quotas have to be sold to realise any capital loss?

Decision:

No. The cancellation of a quota will give rise to a capital loss.

Question:

(b) (ii) Is the capital loss attributable to the 1999-2000 income year or the 2000/2001 income year?

Decision:

The capital loss is attributable to the 2000-01 income year because the quotas are cancelled in that year.

Question:

(c) (i) Do State Governments actually have to resume the quotas at 'nil' value for a capital loss to exist?

Decision:

No. However, any compensation payable for the cancellation of a quota will reduce the capital loss by the amount of the compensation. (The DSAP amounts and the DEP amounts are not compensation for the cancellation of the quotas).

Question:

(c) (ii) Is such a capital loss allowable for taxation purposes?

Decision:

Capital losses can only reduce current and future capital gains. There is no time limit by which the capital losses must be offset.

Background:

- The dairy industry regulatory environment was divided into two broad categories based on whether milk is used as liquid milk for human consumption (market milk) or in the manufacture of dairy products (manufacturing milk). Manufacturing milk arrangements were underpinned by Commonwealth legislation that provided for the operation of the Domestic Market Support (DMS) scheme. The DMS scheme ended on 1 July 2000.
- Market milk arrangements were underpinned by State legislation and provided a guaranteed producer price for milk used as market milk that was about double the producer price for manufacturing milk. The mechanisms for guaranteeing this premium varied between each State and Territory. Quota arrangements operated in New South Wales, Queensland and Western Australia while Victoria, South Australia and Tasmania operated different schemes which provided for equitable sourcing and payment for market milk.
- The Commonwealth has facilitated the provision of a $1.74 billion package to assist farmers to make the transition to a deregulated environment which is to be funded via a retail levy of 11 cents/litre and which provides for two types of payments to farmers as follows:
  - Dairy Structural Adjustment Program (DSAP) payments - these are quarterly payments to be received over an 8 year period. They have been based on farmers 1998-99 milk deliveries and calculated at the rate of 46.23 cents per litre for market milk and an average 8.96 cents per litre for manufacturing milk;
  - Dairy Exit Payments (DEP) - available for farmers who choose to leave agriculture.
- *The Dairy Industry Adjustment Act 2000* (Cth) (DIAA) provides for the following treatment of the two types of payments:
  - DSAP payments - treated as subsidies and therefore assessable under s 15-10 of the Income Tax Assessment Act 1997 (ITAA97);
  - DEP - the DIAA amended the CGT provisions in the ITAA 1997 (section 118-37) to provide that any capital gain or capital loss made in relation directly to a DEP is disregarded.
- The Commonwealth package was conditional on all States and Territories agreeing to remove their regulated farm gate pricing arrangements. This has now been done via the repeal of legislation in each State.

11.4 Flood relief

Note: This advice is based on the information and joint press release provided to the ATO by the Commonwealth Department of Agriculture, Fisheries, Forestry - Australia (AFFA), through Department of the Treasury, dated 6 December 2000.

11.4.1 - Flood package and GST – income support

Are the payments of income support and existing debt interest rate subsidies from the Federal Government Flood Package to farmers subject to GST?

Non-interpretative – straight application of the law

Answer

No.

Explanation

The payments of Income Support and Existing Debt Interest rate subsidies will not be subject to GST as the recipient is not making a taxable supply.

The recipient is merely satisfying eligibility requirements that will either ensure they are entitled to the payments or not. Although there may be some expectation that the money will be used for certain purposes (for example, paying back loans), there is no blinding obligation.

The payments by AFFA or Centrelink are therefore not consideration in return for a supply by the recipient. The recipient is therefore not making a taxable supply to the government in return for the payment and accordingly no GST is applicable to the transaction.

11.4.2 - Flood Package and GST - reimbursement

Are the payments of reimbursement grants for small business and crop replanting from the Federal Government Flood Package to farmers subject to GST?

Non-interpretative – straight application of the law

Answer

No.

Explanation

Payments of the Small Business Grant and the Crop Replanting Grant are not consideration for a taxable supply by the recipient and the grant will, therefore, not be subject to GST. The recipient has merely expended the money and is seeking reimbursement only.

11.5 Farm help

11.5.1 – GST on Farm Help Payments

Question

Will farmers be liable for GST on payments made under the Farm Help Income Support (formerly Restart Income Support) and the Farm Help Re-establishment Grant Scheme (formerly Restart Re-establishment Grant)?

For the source of the ATO view, refer to GSTR 2012/2 - *Goods and services tax: financial assistance payments*.

Answer

- No. The Farm Help Income Support Scheme will not be consideration for a taxable supply.
- No. The Farm Help Re-establishment Grant Scheme will not be consideration for a taxable supply.

Explanation

Payments made to farmers under either the Farm Help Income Support Scheme (FHIS) or the Farm Help Re-establishment Grant Scheme (FHRG) are considered to be grants of financial assistance. The GST treatment of grants is discussed in Goods and Services Tax Ruling *GSTR 2000/11 Goods and Services Tax: grants of financial assistance*.

Paragraph 97 of GSTR 2012/2 states:

> 'An entity that receives a financial assistance payment is liable for GST in respect of that payment if the payment is consideration for a supply and all the other requirements for a taxable supply are met.'

It is, therefore, necessary to determine whether farmers make a supply in relation to the payments under FHIS and the FHRG.

Section 9-10 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) defines the meaning of supply. It says that a supply is any form of supply whatsoever and includes the creation, grant, transfer, assignment or surrender of any right.

However, paragraph 119 of GSTR 2012/2 states:

> 'A further example of where there may be no supply is where an agreement between the parties is not binding and creates expectations alone. Where the financial assistance payment is made in circumstances where a party expects that something will be done, and it does not involve a binding obligation or the supply of goods, services or some other thing, there is no supply. The mere expectation that an act or event will happen is not sufficient to establish a supply.'

(a) Farm Help Income Support Scheme

The FHIS consists of payments from Centrelink to farmers. The payments are available to the farmers for up to twelve (12) months whilst the farmers are receiving professional advice on the future viability of their farm.

If farmers meet the eligibility criteria of the FHIS, there is an expectation that they will obtain professional advice on the viability of their farm business and future options. Farmers can receive up to $3,000.00 per family. These payments can include payments of up to $450.00 for travel costs and other costs associated with obtaining the advice. The seeking of professional advice is not a binding requirement. It is merely expected that the payment be used to obtain professional advice. As per paragraph 33 of GSTR 2000/11 the creation of an expectation does not establish a supply.

Therefore, any payments received in relation to the FHIS scheme will not represent consideration for taxable supply.

(b) Farm Help Re-establishment Grant Scheme

The FHRG payments are made to assist farmers who exit the farming industry and are paid by Centrelink. In order to be eligible for payment, the grant recipient must first qualify for FHIS. They are also required to have sold their farm and exited the

farming industry. There is a requirement that the farmer is to remain outside the agricultural industry for five (5) years. If the recipient of the payment chooses to return to the industry, repayment of the FHRG will be sought.

The requirement to be excluded from an industry for a period of time is a restrictive covenant. If a restrictive covenant is enforced it will be a supply. However, under the FHRG program the farmers have already exited the industry and consequently the supply will not be made in the course or furtherance of an enterprise that they are carrying on. Therefore, it is considered that on this basis any obligation entered into in relation to the FHRG program will not constitute a taxable supply.

11.5.2 - Farm help/ farm restart scheme (PAYG and income Tax).

Does not relate to an indirect tax specific issue

Questions:

1. Income Support Payment

1.1 Will the Farm Help income support payment be assessable income to the recipient?

1.2 Is the Farm Help income support payment included in the instalment income of the recipient for PAYG instalments purposes?

1.3 Will the beneficiary rebate apply to the Farm Help income support payments?

1.4 Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA97 - Long-term averaging of primary producers' tax liability?

2. Re-establishment Grant

2.1 Will the Farm Help re-establishment grant be assessable income to the recipient?

2.2 Will there be capital gains tax implications on the receipt of the Farm Help re-establishment grant?

2.3 Is the Farm Help re-establishment grant included in the instalment income of the recipient for PAYG instalments purposes?

Background

Program Name Change

The Farm Household Support Amendment Act 2000 changed the program name of the Farm Family Restart Scheme to the Farm Help Supporting Families Through Change program, which required the word 'restart' in the relevant legislation to be replaced with the words 'farm help'. Consequently the following refers to payments made under the Farm Help program. The payments made under the Farm Help Program are made by Centrelink under the *Farm Household Support Act 1992*.

Description of Program

The AAA - Farm Help - Supporting Families through Change program is one of a number of programs developed as a part of the Commonwealth Government's Agriculture - Advancing Australia (AAA) package. The scheme aims to provide:

- financial assistance to farmers and their families who are experiencing financial hardship and who cannot borrow further against their assets;
- tailored assistance to farm families to adjust and make decisions about their future in the industry;
- access to skills retraining for an alternative career; and

- access to professional advice on the future viability of their business and on employment opportunities if they choose to exit the industry.

This assistance allows farmers the choice of leaving the industry before their assets are severely depleted.

Types of Benefits Payable

Farm Help has four key components:

- Income support payable for a maximum of 12 months at the Newstart Allowance rate with a partner component. Farmers who receive income support will be required to obtain professional advice on the farm's financial viability with three months of commencing payments.
- A re-establishment grant of up to $45,000 which is payable when an eligible farmer leaves the farming industry. The grants are only available to farmers who applied for Farm Help before they sell their farm and before 30 November 2003. Farmers will generally then have 12 months to sell their farm subject to an assets test. Re-establishment grants are subject to an assets test on the sale of the farm. The grant will reduce by $2 for every $3 in assets in excess of $100,000. Any income support paid to farmers by Centrelink will also be deducted from the re-establishment grant.
- An obligation to obtain professional advice on the future viability of the business, and career counselling where appropriate. Farm families will receive up to $3,000 (excluding GST) to obtain advice, and to help with any costs associated will obtaining advice such as travel or childcare. With the assistance of their Centrelink Farm Help contact, farmers and their families can undertake a 'Pathways Plan' which identifies their goals and how they may be achieved. The 'Pathways Plan' is compulsory for businesses assessed as nonviable.
- A retraining grant of $3,500 is available to farmers and/or their partner who receive a re-establishment grant under the Farm Help program. Only one retraining grant is available for each re-establishment grant paid.

Farmers who have been on Farm Help Income Support for less than six months, and withdraw, are eligible to rejoin the program to complete their 12 months. Those who withdraw after six months cannot rejoin.

Answers and Explanation:

1. Income Support Payment

Question 1.1:

Will the Farm Help income support payment be assessable income to the recipient?

Answer:

The payment is generally assessable income to the recipient, however the portion if any, of the payment made for rental assistance, or remote area allowance would not be assessable and is treated as exempt income.

Explanation:

Sub-section 6-5(2) *Income Tax Assessment Act 1997* (ITAA97) specifies that where a person is an Australian resident, the person's assessable income includes the ordinary income the person derives directly or indirectly from all sources, whether in or out of Australia, during the income year.

The income support is paid on a regular (fortnightly) basis by Centrelink at the Newstart Allowance rate. The payment is to provide financial assistance to farmers who are suffering hardship. It is considered that the income support payments are income according to ordinary concepts and therefore assessable under section 6-5 ITAA97.

Section 6-20 ITAA97 specifies that an amount of ordinary income or statutory income is exempt income if it is made exempt from income tax by a specific provision. As the payment is being made under the Farm Household Support Act 1992 (FHSA), section 53-10 Item 3 ITAA97 exempts the supplementary amount of the income support payment. Section 53-15 ITAA97 defines the supplementary amount as being so much of the payment, which is included by way of rental assistance and remote area allowance.

Question 1.2:

Is the Farm Help income support payment included in the instalment income of the recipient for PAYG instalments purposes?

Answer:

No, Farm Help income support payments are not included in the instalment income of the recipient for PAYG purposes.

Explanation:

As the Farm Help income support payment is a withholding payment under section 12-110 of Schedule 1 (TAA), the payment is specifically excluded from the instalment income of the recipient by subsection 45-120(3) of Schedule 1 (TAA).

Question 1.3:

Will the beneficiary rebate apply to the Farm Help income support payments?

Answer:

The beneficiary rebate will apply to the payments.

Explanation:

Amounts paid by way of exceptional circumstances relief payment or farm help income support under the FHSA are considered rebatable benefits as per sub-section 160AAA(1) *Income Tax Assessment Act 1936* (ITAA36). Where a rebatable benefit is received, a beneficiary rebate calculated in accordance with the regulations is allowable (subsection 160AAA(3) ITAA36).

Question 1.4:

Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA97 - Long-term averaging of primary producers' tax liability?

Answer:

The payment would not be treated as income from primary production.

Explanation:

In calculating the effect of the provisions of Division 392 ITAA97 on a primary producer's tax liability, the amount of assessable primary production income of the taxpayer is utilised. Subsection 392-80(2) ITAA97 defines assessable primary production income as the amount of assessable income that was derived from, or resulted from, your carrying on a primary production business.

The Farm Help income support payments are a welfare payment made to farmers suffering financial hardship. A farmer is defined in section 3 FHSA as a person who:

- has a right or interest in the land used for the purposes of a farm enterprise; and
- contributes a significant part of his or her labour and capital to the farm enterprise; and
- derives a significant part of his or her income from the farm enterprise.

Even though a person needs to be a farmer to be eligible for the income support, it is considered that the payments are not derived from, or resulted from, carrying on a primary production business. Therefore the payments are considered not to be income from primary production for the purposes of Division 392 of the ITAA97.

2. Re-establishment Grant

Question 2.1:

Will the Farm Help re-establishment grant be assessable income to the recipient?

Answer:

The re-establishment grant is not assessable income to the recipient.

Explanation:

It is considered that the grant would not be assessable under 6-5 ITAA97, as the grant does not have the characteristics of ordinary income.

The payment is not received as part of the proceeds of the farming business, but rather, it is a once-off payment which is payable when an eligible farmer leaves the farming industry. It is considered that the payment is a capital receipt to the recipient.

Bounties and subsidies received in relation to carrying on a business which are not assessable as ordinary income, such as receipts of a capital nature, can be included in assessable income by section 15-10 ITAA97. As the payment is made to a farmer

to leave the industry, it is considered that the payment is not received in relation to carrying on a business and therefore is not assessable under section 15-10 ITAA97.

Question 2.2:

Will there be Capital Gains Tax implications on the receipt of the Farm Help re-establishment grant?

Answer:

There are no capital gain implications in receiving a re-establishment grant.

Explanation:

Section 118-37 ITAA97 states that a capital gain or loss, that is made from a CGT event relating directly to a re-establishment grant under section 52A of the Farm Household Support Act 1992, is to be disregarded. The Farm Help re-establishment grant is paid under section 52A of the Farm Household Support Act 1992. Therefore any capital gain or loss from the CGT event will be disregarded.

Question 2.3:

Is the Farm Help re-establishment grant included in the instalment income of the recipient for PAYG instalments purposes?

Answer:

The Farm Help re-establishment grant is not included in the instalment income of the recipient.

Explanation:

Instalment income for a period generally includes gross ordinary income derived during that period, provided that the ordinary income is also included in assessable income for the income year to which the period belongs (section 45-120 of the TAA). As the payment of the Farm Help re-establishment grant does not represent ordinary income, this amount will not be included in the instalment income of the recipient.

For certain entities, amounts representing statutory income are also included in assessable income if it is reasonably attributed to that period and is assessable income of the year that is or includes that period. These entities include eligible Approved Deposit Funds, eligible superannuation funds and pooled superannuation trusts. Statutory income would include a net capital gain. However, as the receipt of the Farm Help re-establishment grant has no capital gains implications, this payment does not result in an amount of statutory income being included in assessable income.

Therefore, regardless of the type of entity in receipt of the payment, the Farm Help re-establishment grant would not be included in the instalment income of the recipient.

11.5.3 - Exceptional circumstances relief payments

Does not relate to an indirect tax specific issue

Questions:

Will the Exceptional Circumstances Relief Payment (relief payment) be assessable income to the recipient?

Will the exceptional circumstances relief payment be included in the instalment income of the recipient?

Will the beneficiary rebate apply to the Exceptional Circumstances Relief Payment?

Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA 1997 - Long-term averaging of primary producers' tax liability?

Background:

Description of Program

The Exceptional Circumstances Relief Payment (ECRP) is delivered by Centrelink on behalf of the Department of Agriculture, Fisheries and Forestry - Australia. The payment provides assistance to farmers living in 'exceptional circumstances' affected area who are having difficulty meeting family and personal living expenses.

To qualify for Exceptional Circumstances Relief Payment, a person must:

- be a farmer,
- be over 18 years old,
- be an Australian resident and living in Australia, and
- hold a current Exceptional Circumstances certificate issued by the State Rural Adjustment Scheme Authority, which identifies that the farm enterprise is in an 'exceptional circumstances' affected area.

Description of Payment

Exceptional Circumstances Relief Payment is paid fortnightly at a rate equivalent to Newstart Allowance and, where applicable, Partner Allowance.

Payment is subject to the same income and assets tests applying to Newstart Allowance. However, the farm assets, including the farmer's superannuation and life insurance, are exempt from the assets test. Proceeds from the forced disposal of livestock due to exceptional circumstances are excluded from the income test. In this case, farmers will be required to deposit the proceeds from the forced sale in either a Farm Management Deposit or a deposit with a term of at least three months with a bank, building society, credit union or other institution that receives money on deposit.

Answer and Explanation

1. Will the Exceptional Circumstances Relief Payment (relief payment) be assessable income to the recipient?

Answer:

The payment is generally assessable income to the recipient, however the portion, if any, of the payment made for rent assistance or remote area allowance would not be assessable and is treated as exempt income.

Explanation:

Sub-section 6-5(2) *Income Tax Assessment Act 1997* (ITAA 1997) specifies that where a person is an Australian resident, the person's assessable income includes the ordinary income the person derives directly or indirectly from all sources, whether in or out of Australia, during the income year.

The relief payment is paid on a regular (fortnightly) basis by Centrelink at the Newstart Allowance rate. The payment is to provide financial assistance to farmers who are suffering hardship. It is considered that the relief payments are income according to ordinary concepts and therefore assessable under section 6-5 ITAA 1997.

Section 6-20 ITAA 1997 specifies that an amount of ordinary income or statutory income is exempt income if it is made exempt from income tax by a specific provision. As the payment is being made under the Farm Household Support Act 1992 (FHSA), section 53-10 Item 3 ITAA 1997 exempts the supplementary amount of the income support payment. Section 53-15 ITAA 1997 defines the supplementary amount as being so much of the payment which is included by way of rental assistance and remote area allowance.

2. Will the exceptional circumstances relief payment be included in the instalment income of the recipient?

Instalment income generally includes ordinary income derived during the period, but only to the extent that it is assessable income of the income year that is or includes that period. However, instalment income excludes withholding payments (except those for non-quotation of a TFN or ABN). An entity must withhold an amount from a payment it makes to an individual under section 12-110 of Schedule 1, TAA if the payment is specified in section 53-10 of the ITAA 1997. Please note that this only applies to the portion of the amount excluding the supplementary amount (rent assistance or remote area allowance paid to an individual),

Hence, if the payment is made to an individual, the exceptional circumstances relief payment (including the supplementary amount) would not be included in the instalment income of the recipient. If the payment is made to another entity, the payment would be included in the instalment income of the recipient (excluding any supplementary amount).

3. Will the beneficiary rebate apply to the Exceptional Circumstances Relief Payment?

Answer:

The beneficiary rebate will apply to the payments.

Explanation:

Amounts paid by way of exceptional circumstances relief under the FHSA are considered rebatable benefits as per sub-section 160AAA(1) *Income Tax Assessment Act 1936* (ITAA36). Where a rebatable benefit is received, a beneficiary rebate calculated in accordance with the regulations is allowable (subsection 160AAA(3)).

4. Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA 1997 - Long-term averaging of primary producers' tax liability?

Answer:

The payment would not be treated as income from primary production.

Explanation:

In calculating the effect of the provisions of Division 392 ITAA 1997 on a primary producer's tax liability, the amount of assessable primary production income of the taxpayer is utilised. Subsection 392-80(2) ITAA 1997 defines assessable primary production income as the amount of assessable income that was derived from, or resulted from, your carrying on a primary production business.

The Exceptional Circumstances Relief Payment is a welfare payment made to farmers suffering financial hardship. Even though a person needs to be a farmer to be eligible for the income support, it is considered that the payments are not derived from, or resulted from, carrying on a primary production business. Therefore the payments are considered not to be income from primary production for the purposes of Division 392.

Further information on Division 392 application to ECRP is provided by ATO ID 2004/9 - *Income Tax – Primary Production Exceptional Circumstances Relief Payment*.

11.6 Landcare

11.6.1 - Can a number of small landcare groups get together as one large group and apply for one ABN?

Does not relate to an indirect tax specific issue.

Where each small group is a separate entity, they may be permitted to group, but will have to register for an ABN and GST individually. Once they have received their individual ABN and GST registrations, they may complete a single group registration form provided they satisfy the grouping rules. For further information refer to Part 1 – ABN and GST registration of the Charities consultative committee resolved issues document.

11.6.2 - If a landcare entity receives a grant of just over $75,000 a year, does the entity have to register for the GST?

Non-interpretative – straight application of the law

The entity must register if it is carrying on an enterprise and its GST turnover is at or above $75,000 (or $150,000 if the entity is a non-profit organisation). If the entity's GST turnover is less than the relevant threshold, then registration is a matter of choice.

11.6.3 - If a landcare entity's turnover is below the GST registration threshold, and it chooses not to register for GST, does the landcare entity still need an ABN?

Does not relate to an indirect tax specific issue

Generally, where an entity which is carrying on an enterprise does not quote an ABN to a payer then the pay as you go (PAYG) withholding system requires the payer to withhold 46.5% of the payment and remit these monies to the ATO, unless one of the

general exceptions apply. One of these exceptions are that where the whole payment is exempt income of the payee then there is no requirement for the payer to withhold an amount from a payment to the payee where the payee has not quoted an ABN.

Therefore, if a landcare entity is a tax exempt entity for income tax purposes and chooses not to apply for an ABN then payments made to the landcare entity may be excluded from the PAYG withholding system, if the whole payment is exempt income of the landcare entity.

11.6.4 - If a landcare entity makes arrangements for another organisation (for example, local council) to be the designated funding manager, does that landcare entity need to have an ABN and/or register for the GST?

Non-interpretative – other references (see Part 14 - Conservation of the Charities consultative committee resolved issues document).

The registration rules referred to at the answer for question 2 above, still apply to the landcare entity regardless of the funding management arrangement.

11.6.5 - Will not-for-profit Landcare groups be able to claim back any GST they pay on goods such as fencing?

Non-interpretative – straight application of the law

Provided the landcare group is registered for GST, and acquires the fencing in the course of their enterprise, they will be entitled to claim an input tax credit for GST paid.

Further information can be found at question 17 in Part 14 (Conservation) of the Charities consultative committee resolved issues document.

11.6.6 - What are the GST consequences of the following events:

- A grant is paid under an agreement for the period 1 July 1999 to 30 June 2000. The agreement stipulates that any monies that remain unspent as at 30 June 2000 must be refunded to the government unless alternative arrangements are made, and
- Agreement is reached whereby the grantee will be able to spend the excess funds in the 2001 financial year.

Non-interpretative – straight application of the law

The above arrangements would have the following effects:

A. There is a reduction in the consideration payable in respect of the agreement for the period 1 July 1999 to 30 June 2000. This in itself has no GST consequences, as it relates to pre GST supplies.

B. There is a new agreement for the period 1 July 2000 onwards. Under this new agreement, the grant recipient is agreeing to spend the monies carried over from the 2000 financial year. This new undertaking by the grant recipient is subject to GST as it relates to the period after 1 July 2000.

C. The new agreement is accounted for under Division 156 of the GST Act, which treats each progressive or periodic component of the supply as a separate supply.

D. Each component of the supply under the agreement will be accounted for at the earlier of receiving the cash or providing the service. In this instance, the grant monies have already been paid by the government body to the grant recipient. Therefore, the grant recipient would be required to account for the GST on all supplies under the new agreement in the first period after 1 July 2000.

11.6.7 - What are the GST implications where a landholder provides services to the landcare entity and receives payment in return?

Non-interpretative – straight application of the law

If the landholder is registered for GST, and the other elements of a taxable supply are satisfied, the supply of services will be subject to GST.

11.6.8 - What are the pay as you go (PAYG) Withholding tax requirements where the landcare entity does not quote an ABN to the payer of grant monies?

Does not relate to an indirect tax specific issue

If an entity carrying on an enterprise does not quote an ABN, the payer would normally be required to deduct 46.5% of the grant monies and forward the amount deducted to the Commissioner of Taxation. However, where the monies are income tax exempt in the hands of the recipient, the payer of the grant is not required to deduct tax where an ABN is not quoted. For record keeping purposes it is advisable for the payer of the grant to ask the payee to complete a ‘Statement by a Supplier’ form (reason for not quoting an ABN to an enterprise).

11.6.9 - What are the pay as you go (PAYG) Withholding tax requirements where a landholder does not quote an ABN to the landcare entity?

Does not relate to an indirect tax specific issue.

If the landholder is conducting an enterprise, and does not quote an ABN, the entity would be required to withhold 46.5% of any payments made.

If the landholder is conducting a hobby, PAYG withholding is not applicable. The landholder would merely provide a letter to the effect that his/her activity was only a hobby. If in doubt, the landcare organisation should ask the landholder to complete a ‘Statement by a Supplier’ form confirming that the landholder's activities are merely a hobby.

11.6.10 - What can the entity do if it has inadequate accounting systems, and cannot afford to update them?

Does not relate to an indirect tax specific issue

The ATO has field officers available to help taxpayers such as landcare entities understand GST.

11.6.11 - Is a landcare group entitled to obtain an ABN?

Does not relate to an indirect tax specific issue.

The issue of whether a landcare group is able to obtain an ABN is largely dealt with in Miscellaneous Taxation MT 2006/1 which discusses the meaning of 'entity carrying on an enterprise' for the purposes of entitlement to an ABN.

The first step in determining eligibility for an ABN is to ascertain whether a landcare group is an entity.

It would appear clear that in the majority of situations, a landcare group is an entity. The term 'entity' includes an 'unincorporated association of persons'. Paragraphs 55-58 of MT 2006/1 provide an example of 'unincorporated associations of persons' that has a membership, a committee, a system of rules, and an understanding between the members of their rights, privileges and responsibilities. Paragraph 47 of MT 2006/1 states that the term 'body of persons' may be seen as consisting of a group of persons who associate to achieve a common aim or purpose and who are bound by mutual obligations and rights.

The second requirement that a landcare group must satisfy in order to obtain an ABN is that they are carrying on an enterprise.

The term 'enterprise' is defined in section 38 of the *A New Tax System (Australian Business Number) Act 1999* (ABN Act), and includes an activity or series of activities, done by a charitable institution or by a trustee of a charitable fund. Where a landcare group is a charitable institution etc. they are not required to be carrying on a business in order to obtain an ABN.

A discussion of whether conservation bodies (including landcare groups) can qualify as charitable institutions appears in Part 16 of the Charities consultative committee resolved issues document.

Generally speaking, there are two main types of landcare group that could miss out on being considered a charity. The first is groups that are in fact government bodies. The second is where the primary activities of the landcare group are other than charitable - political lobbying would not be charitable for example. Government bodies are not required to be in business in order to obtain an ABN - they must merely be conducting activities. Landcare groups that have the main purpose of lobbying may in any event be able to contend their activities amount to a business. Importantly, only an individual or partnership is prohibited from obtaining an ABN where there is no reasonable expectation of profit.

11.7 Under and over passes

11.7.1 - Reimbursement grant from RIDF – GST status

Question

Is the payment of a reimbursement grant from the Victorian Rural Infrastructure Development Fund (RIDF) to farmers for the completion of a stock under/overpass subject to GST?

For the source of the ATO view, refer to paragraphs 108 to 190 of GSTR 2000/11 - *Goods and services tax: grants of financial assistance*

Answer

No.

Background

A total of $4 million has been made available from the Rural Infrastructure Development Fund (RIDF), established under the Bracks Government's Reviving Rural and Regional Victoria policy for the installation of stock under/overpasses.

The installation of stock under/overpasses has been a key concern for members of the Victorian Farmers' Federation (VFF), in particular those involved in the dairy industry for many years. The provision of this funding is intended to facilitate the installation of stock under/overpasses improving the safety of farming families and their employees who regularly take stock across arterials and also the safety of rural roads for the motoring public. The installation is not compulsory nor is there public access to these stock under/overpasses.

The VFF is administering this funding on behalf of the Department of State and Regional Development.

The RIDF has directed that funding for each under/overpass will be to a maximum of $20,000 and applied on a dollar for dollar basis. For example, if the under/overpass is valued at $50,000 the maximum contribution will be $20,000. If the project is valued at $32,000 the maximum contribution will be $16,000. Funding is available for stock under/overpasses on any road or rail line. It is not available for channel crossings.

Construction must have commenced after 17 June 2000. Funding is not retrospective prior to this date. Funds will be received when the stock under/overpass is completed. This will need to be verified by a final inspection report issued by an authorised officer of either Vic Roads, Council or the Rail Authority. Original copies of receipts for construction costs will need to be provided.

Eligible costs include - laneway construction including cost of fencing materials and the material for the laneway surface back to the boundary fence, electricity connection, pumps, plumbing/drainage costs, signage, construction, road resurfacing and guard rails whether these are provided by the farmer or a supplier.

Costs associated with the farmer's contribution to the under/overpass cost for example, finance expenses and ongoing maintenance expenses are not eligible.

Explanation

The Australian Taxation Office understands that the installation of stock under/overpasses in Victoria is intended to improve the safety of farming families and their employees who regularly take stock across public roads this in turn makes these roads safer for motorists.

These structures are installed on private property and have no public access. The building of these structures is not compulsory and the funds are only received when the stock under/overpass is completed.

Generally, where a grant is paid for a specific purpose or subject to conditions, this will be treated as a payment by the recipient for a supply. This would also apply if the grant reimburses the recipient for expenses which the recipient has already incurred. Grants may be consideration for the supply of information in the grant application or, in some cases, the giving up of a recipient's right to reimbursement.

However, in the case of the reimbursement grant for stock over/under passes there are no binding obligations. Therefore, the reimbursement grant is not consideration for a supply made by the recipient (Sections 9-5 and 9-15 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)).

For further information see paragraphs 108-109 of Goods and Services Tax Ruling

11.8 Sugar

Note: This information has not been updated to take into account the Sugar Industry Reform Program 2004 that was announced by the Prime Minister, the Hon John Howard MP, on the 29 April 2004.

11.8.1 - Sugar Industry Assistance Package – GST treatment

This issue is no longer relevant as the Sugar Industry Assistance Package was a short term measure which has ended.

Non-interpretative – other references (see Paragraphs 89 to 100 of Goods and Services Tax Ruling GSTR 200R 2000/11 - *Goods and service tax: grants of financial assistance.*

Question

Are payments to canegrowers under the Sugar Industry Assistance Package subject to GST?

Answer

No. Payments under the Sugar Industry Assistance Package do not represent consideration for supplies made by canegrowers. Therefore, payments to canegrowers under the Package will not be subject to GST.

Background

The package was announced by the Federal Agriculture minister on 1 September 2000 as including:

- significant interest subsidies on loans of up to $50,000 used to plant cane crops this and next season;
- interest subsidies on new or existing loans of up to $100,000 associated with the business of producing cane;
- family relief payments from 1 September to assist cane farmers and their families;
- vouchers of up to $1,000 per farmer to access financial counselling services, where these services are not already provided

Explanation

The payments and the benefits provided are in the nature of assistance, and not consideration for any supplies made by the growers.

Although canegrowers must complete an application form in order to establish their eligibility for the interest subsidies, family relief payments, or financial counselling vouchers, made available by the government, these benefits are not consideration for the supply of the information in the application form. Rather, the benefits are paid to assist the canegrowers maintain their businesses. Paragraphs 89 to 100 of discuss supplies of information required to establish eligibility for financial assistance.

11.8.2 Sugar Industry Assistance Package - BAS issues

This issue is no longer relevant as the Sugar Industry Assistance Package was a short term measure which has ended.

Non-interpretative

Question

Should payments made to sugar cane farmers under the Interest Rate Subsidy scheme, which is part of the Sugar Industry Assistance Package, be included at G1 on the farmer's business activity statement (BAS)?

Answer

No. The payments to sugar cane farmers under the Sugar Industry Assistance Package will not be included at G1 on the BAS. The Sugar Industry Assistance Package payment should, however, be included at T1.

Explanation

As explained in the BAS instructions at page 34, G1 (total sales and income and other supplies) is used to include all the payments and other consideration (including GST) received during the current tax period for supplies made in the course of business. As the payment of the subsidy is not consideration for a supply, it will not be included on the recipient's BAS at G1.

As the interest rate subsidy is paid to assist farmers plant cane in their cane farming business, it is considered that the interest rate subsidy is ordinary income and therefore is included in the instalment income of the recipient for the purposes of PAYG. The interest rate subsidy should be included on the recipient's BAS at T1.

For further information on the Sugar Industry Assistance Package, visit the Centrelink website.

11.8.3- Sugar Industry Assistance Package – income tax and PAYG questions

This issue is no longer relevant as the Sugar Industry Assistance Package was a short term measure which has ended.

Does not relate to an indirect tax specific issue

Questions

1. Interest Rate Subsidy (on loans used for planting cane crops)

1.1 Will the interest rate subsidy be assessable?

1.2 Is the receipt of the subsidy considered instalment income for the purposes of the pay as you go (PAYG) instalments system?

1.3 Is the payment to be treated as income from primary production in applying the provisions of Division 392 - Long-term averaging of primary producers' tax liability?

1.4 Are there any Capital Gains Tax implications from receiving the interest rate subsidy?

2. Interest Rate Subsidy (loans associated with the business of producing cane)

2.1 Will the interest rate subsidy be assessable?

2.2 Is the receipt of the subsidy considered instalment income for the purposes of the pay as you go (PAYG) instalments system?

2.3 Is the payment to be treated as income from primary production in applying the provisions of Division 392 - Long-term averaging of primary producers' tax liability?

2.4 Are there any capital gains tax implications from receiving the interest rate subsidy?

3. Income Support Payment

3.1 Will the income support payment under the Sugar Industry Assistance Package be assessable income to the recipient?

3.2 Will the income support payment under the Sugar Industry Assistance package be included in the instalment income of the recipient?

3.3 Will the beneficiary rebate apply to the income support payments?

3.4 Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA 1997 - Long-term averaging of primary producers' tax liability?

4. Vouchers to access financial counselling services

4.1 Will the provision of the voucher be considered assessable income to the recipient?

Background

Description of Program

The package includes:

- Interest subsidies on loans of up to $50,000 used to plant cane crops in the 2000-01 and 2001-02 seasons;
- Interest subsidies on new and existing loans of up to $100,000 associated with the business of producing cane;
- Income support payments from 1 September 2000 to assist cane farmers and their families; and
- Vouchers of up to $1,000 per farmer to access financial counselling services, where these services are not already provided.

Applicants will need to be an eligible cane grower. That is, the applicant must:

- have been a cane grower for at least 2 years immediately prior to lodging the claim;
- have a right or interest in the land used for the purposes of a sugar industry enterprise:

and meet two of the following criteria:

- contribute the majority of his/her labour to the cane farm enterprise;
- contribute the majority of his/her capital to the cane farm enterprise; and
- derive the majority of their income from cane farming.

Answers and explanation

1. Interest Rate Subsidy (on loans used for planting cane crops) -

Description of payment

The interest rate subsidies are available on loans of up to $50,000 to be used to meet expenses necessary for replanting crops in 2000/01 and 2001/02.

The support will help cane growers access funds needed to either plant or replace diseased cane.

Question 1.1

Will the interest rate subsidy be assessable?

Answer

The receipt of the subsidy would be treated as a receipt of assessable income.

Explanation

The assessable income of a taxpayer includes a subsidy that is received in relation to carrying on a business and the subsidy is not assessable as ordinary income (section 15-10 Income Tax assessment Act 1997 (ITAA 1997)).

The interest rate subsidy is paid to assist continuing farmers to plant or replace diseased cane crops.

As the subsidy assists cane farmers to pay the interest payments on loans made to plant sugar cane, and there is a close relationship between the interest payments and the carrying on of a business on the farm, it is considered that the receipt of the subsidy is in relation to the carrying on of a business. Therefore the subsidy will be assessable as per section 15-10 ITAA 1997, if the subsidy is not assessable as ordinary income as per section 6-5 ITAA 1997.

If the subsidy is provided as an ordinary incident of carrying on a primary production business, the subsidy could be considered income according to ordinary concepts under section 6-5 ITAA 1997.

It is considered that the subsidy is assessable under sections 6-5 ITAA 1997 [see reasons to answer question 2, immediately below].

Question 1.2

Is the receipt of the subsidy considered instalment income for the purposes of the Pay As You Go (PAYG) instalments system?

Answer

Yes, it would be included in the instalment income of the recipient.

Explanation

'Instalment income' is defined in section 45-120 of Schedule 1 *Taxation Administration Act 1953* (TAA) to mean ordinary income derived during the period, but only to the extent that it is assessable income of the income year that is or

includes that period. Ordinary income is defined in section 995-1 ITAA 1997 as having the meaning given by section 6-5 ITAA 1997.

For most farm enterprises, income assessable under section 15-10 ITAA 1997 is not considered instalment income.

However if the subsidy is assessable under section 6-5 ITAA 1997, the income is ordinary income and would be considered instalment income.

Therefore it is important to determine whether the payment is ordinary income or not.

Given the frequency of adverse natural events which affect farmers and given that disaster relief is now becoming increasingly available to affected farmers, one may argue that the assistance provided is an ordinary incident of carrying on a primary production business. As such the subsidy could be considered income according to ordinary concepts.

The question whether or not a subsidy can be regarded as being ordinarily incidental to or arising out of the carrying on of a farming business was looked at in the Administrative Appeals Tribunal case *92 ATC 225*.

In that case, the taxpayer was a member of a cane-farming partnership which purchased a farm with the help of a $293,000 loan from the Queensland Industry Development Corporation (QIDC). The partnership also obtained $33,310 from QIDC under the Sugar Industry Assistance Scheme (SIA Scheme). The money was used to reduce the QIDC loan. The amount under the SIA Scheme was calculated as the equivalent in present value terms to an interest subsidy of up to 50% of an agreed rate over a seven-year loan term (the maximum term). If the members of the partnership continued to be cane farmers throughout that seven-year period, and the conditions of the Scheme were complied with, the assistance would be converted into a non-repayable grant. In certain circumstances, however, the assistance was refundable, in which case the partnership would be required to refund the initial lump sum paid, reduced by one-seventh for each year, or part of a year, elapsed since the assistance was first provided.

It was held that the assistance under the SIA Scheme was a conditional loan which became in part a grant or subsidy year-by-year to the extent that it ceased to be repayable. On each anniversary, when one-seventh of the assistance became non-repayable, that one-seventh assumed the mantle of income by way of a grant. It was derived at that point in time and thus became assessable income. As the assistance was provided so that the partnership could better service the QIDC loan, the assistance was income according to ordinary concepts and thus assessable under sec 25(1) ITAA36 (the predecessor of section 6-5). The one-off nature of the payment did not prevent it from being income.

Taxation Determination TD 98/28 looked at grants received by small business from the Commonwealth Government Gas Emergency Assistance Fund. It was determined that the payments are either assessable as income according to ordinary concepts or, being a bounty or subsidy, specifically assessable as statutory income under section 15-10 ITAA 1997.

As the interest rate subsidy is paid to assist farmers plant cane in their cane farming business, it is considered that the interest rate subsidy is ordinary income and therefore is included in the instalment income of the recipient for the purposes of PAYG.

Question 1.3

Is the payment to be treated as income from primary production in applying the provisions of Division 392 - Long-term averaging of primary producers' tax liability?

Answer

It is considered that the payment would be treated as income from primary production.

Explanation

In calculating the effect of the provisions of Division 392 ITAA 1997 on a primary producer's tax liability, the amount of assessable primary production income of the taxpayer is utilised. Subsection 392-80(2) ITAA 1997 defines assessable primary production income as the amount of assessable income that was derived from, or resulted from, your carrying on a primary production business.

The payment is based on the interest paid on loans used to plant cane crops. It is considered that the payments are derived from, or resulted from, carrying on a primary production business of cane farming. Therefore the payments are considered to be income from primary production for the purposes of Division 392.

Question 1.4

Are there any capital gains tax implications from receiving the interest rate subsidy?

Answer

No, capital gains tax will not apply.

2. Interest Rate Subsidy (loans associated with the business of producing cane)

Description of payment

The general interest rate subsidies are available on new loans or restructuring of existing loans up to a maximum of $100,000, for cane growers to support the business of growing cane.

The purpose of the loan cannot include new capital purchases, but past capital expenses will be acceptable as part of restructuring existing loans.

The subsidies will be paid up-front (each year for next two years) directly to the loan account of the customer.

There can be only one claim per farm enterprise or individual.

The interest rate subsidy is subject to an off-farm assets test (limit $189,500 excluding bona fide superannuation and life insurance policies)

Question 2.1

Will the interest rate subsidy be assessable?

Answer

The receipt of the subsidy would be treated as a receipt of assessable income.

Explanation

The assessable income of a taxpayer includes a subsidy that is received in relation to carrying on a business and the subsidy is not assessable as ordinary income (section 15-10 ITAA 1997).

The interest rate subsidy is being paid to assist cane growers in their business of growing cane.

As the subsidy assists cane farmers to pay the interest payments on loans made as part of the cane growing business, and there is a close relationship between the interest payments and the carrying on of a business on the farm, it is considered that the receipt of the subsidy is in relation to the carrying on of a business. Therefore the subsidy will be assessable as per section 15-10 ITAA 1997, if the subsidy is not assessable as ordinary income as per section 6-5 ITAA 1997.

If the subsidy is provided as an ordinary incident of carrying on a primary production business, the subsidy could be considered income according to ordinary concepts under section 6-5 ITAA 1997.

It is considered that the subsidy is assessable under sections 6-5 ITAA 1997 [see answer to question 2, immediately below].

Question 2.2

Is the receipt of the subsidy considered instalment income for the purposes of the Pay As You Go (PAYG) instalments system?

Answer

Yes, it would be included in the instalment income of the recipient.

Explanation

'Instalment income' is defined in section 45-120 of Schedule 1 TAA to mean ordinary income derived during the period, but only to the extent that it is assessable income of the income year that is or includes that period. Ordinary income is defined in section 995-1 ITAA 1997 as having the meaning given by section 6-5 ITAA 1997.

For most farm enterprises, income assessable under section 15-10 ITAA 1997 is not considered instalment income.

However if the subsidy is assessable under section 6-5 ITAA 1997, the income is ordinary income and would be considered instalment income.

Therefore it is important to determine whether the payment is ordinary income or not.

Given the frequency of adverse natural events which affect farmers and given that disaster relief is now becoming increasingly available to affected farmers, one may argue that the assistance provided is an ordinary incident of carrying on a primary production business. As such the subsidy could be considered income according to ordinary concepts.

The question whether or not a subsidy can be regarded as being ordinarily incidental to or arising out of the carrying on of a farming business was looked at in the Administrative Appeals Tribunal case *92 ATC 225*.

In that case, the taxpayer was a member of a cane-farming partnership which purchased a farm with the help of a $293,000 loan from the Queensland Industry Development Corporation (QIDC). The partnership also obtained $33,310 from QIDC under the Sugar Industry Assistance Scheme (SIA Scheme). The money was used to reduce the QIDC loan. The amount under the SIA Scheme was calculated as the equivalent in present value terms to an interest subsidy of up to 50% of an agreed rate over a seven-year loan term (the maximum term). If the members of the partnership continued to be cane farmers throughout that seven-year period, and the conditions of the Scheme were complied with, the assistance would be converted into a non-repayable grant. In certain circumstances, however, the assistance was refundable, in which case the partnership would be required to refund the initial lump sum paid, reduced by one-seventh for each year, or part of a year, elapsed since the assistance was first provided.

It was held that the assistance under the SIA Scheme was a conditional loan which became in part a grant or subsidy year-by-year to the extent that it ceased to be repayable. On each anniversary, when one-seventh of the assistance became non-repayable, that one-seventh assumed the mantle of income by way of a grant. It was derived at that point in time and thus became assessable income. As the assistance was provided so that the partnership could better service the QIDC loan, the assistance was income according to ordinary concepts and thus assessable under sec 25(1) ITAA36 (the predecessor of section 6-5). The one-off nature of the payment did not prevent it from being income.

Taxation Determination TD 98/28 looked at grants received by small business from the Commonwealth Government Gas Emergency Assistance Fund. It was determined that the payments are either assessable as income according to ordinary concepts or, being a bounty or subsidy, specifically assessable as statutory income under section 15-10 of the Income Tax Assessment Act 1997 assessable income

As the interest rate subsidy is paid to assist farmers carry on a business of cane farming, it is considered that the interest rate subsidy is ordinary income as per section 6-5 ITAA 1997 and would therefore be included in the instalment income of the recipient for the purposes of PAYG.

Question 2.3

Is the payment to be treated as income from primary production in applying the provisions of Division 392 - Long-term averaging of primary producers' tax liability?

Answer

It is considered that the payment would be treated as income from primary production.

Explanation

In calculating the effect of the provisions of Division 392 ITAA 1997 on a primary producer's tax liability, the amount of assessable primary production income of the taxpayer is utilised. Subsection 392-80(2) ITAA 1997 defines assessable primary

production income as the amount of assessable income that was derived from, or resulted from, your carrying on a primary production business.

The payment is based on the interest paid on loans used in carrying on a business of cane farming. As such, it is considered that the payments are derived from, or resulted from, carrying on a primary production business of cane farming. Therefore the payments are considered to be income from primary production for the purposes of Division 392.

Question 2.4

Are there any Capital Gains Tax implications from receiving the interest rate subsidy?

Answer

No, Capital Gains Tax will not apply.

3. Income Support Payment

Description of the payment

The income support payment will be paid fortnightly at a rate equivalent to the maximum rate of Newstart Allowance and Rent Assistance if applicable.

The payment will be subject to an income and assets test similar to that applied under the Newstart Allowance guidelines, however, farm assets will be excluded from the assets test.

Income will include an estimate of the 2000-01 farming income and all off-farm income.

Question 3.1

Will the income support payment under the Sugar Industry Assistance Package be assessable income to the recipient?

Answer

The payment is assessable income to the recipient.

Explanation

Sub-section 6-5(2*) Income Tax Assessment Act 1997* ITAA 1997 specifies that where a person is an Australian resident, the person's assessable income includes the ordinary income the person derives directly or indirectly from all sources, whether in or out of Australia, during the income year.

The income support is paid on a regular (fortnightly) basis by Centrelink at the Newstart Allowance rate. The payment is to provide financial assistance to farmers who are suffering hardship. It is considered that the income support payments are income according to ordinary concepts and therefore assessable under section 6-5 ITAA 1997.

Section 6-20 ITAA 1997 specifies that an amount of ordinary income or statutory income is exempt income if it is made exempt from income tax by a specific provision.

Where a payments is made under the *Farm Household Support Act 1992* (FHSA), section 53-10 Item 3 ITAA 1997 exempts the supplementary amount of the income support payment. Section 53-15 ITAA 1997 defines the supplementary amount as being so much of the payment which is included by way of rental assistance and remote area allowance.

However the *Sugar Industry Assistance Package* income support payment is not made under the FHSA but rather it is made under ministerial grants using guidelines akin to the exceptional circumstances relief payments or farm help income support payments under the FHSA. Therefore the supplementary amount will not be exempted and remains assessable income.

Question 3.2

Will the income support payment under the Sugar Industry Assistance package be included in the instalment income of the recipient?

Answer

As noted above, the income support payment under the Sugar Industry package represents ordinary income of the recipient. This payment would therefore be included in the instalment income of the recipient.

Question 3.3

Will the beneficiary rebate apply to the income support payments?

Answer

The beneficiary rebate will not apply to the payments.

Explanation

The payment is not included in the definition of rebatable benefits as per sub-section 160AAA(1) *Income Tax Assessment Act 1936* (ITAA36). Therefore a beneficiary rebate is not allowable on the payment (subsection 160AAA(3)).

Question 3.4

Is the payment to be treated as income from primary production in applying the provisions of Division 392 ITAA 1997 - Long-term averaging of primary producers' tax liability?

Answer

The payment would not be treated as income from primary production.

Explanation

In calculating the effect of the provisions of Division 392 ITAA 1997 on a primary producer's tax liability, the amount of assessable primary production income of the taxpayer is utilised. Subsection 392-80(2) ITAA 1997 defines assessable primary production income as the amount of assessable income that was derived from, or resulted from, your carrying on a primary production business.

Even though a person needs to be a farmer to be eligible for the income support, it is considered that the payments are not derived from, or resulted from, carrying on a primary production business. Therefore the payments are considered not to be income from primary production for the purposes of Division 392.

4. Vouchers to access financial counselling services -

Description of payment

All eligible cane growers accessing the Sugar Industry Package, who do not have ready access to financial counselling services will be eligible to receive a $1,000 voucher to assist in accessing these services.

Question 4.1

Will the provision of the voucher be considered assessable income to the recipient?

Answer

Where the counselling services are directly related to the cane farming business, the provision of the voucher would represent assessable income to the recipient. However, where the financial counselling relates to the personal financial circumstances of the recipient, it would not be considered assessable income to the recipient.

12 Water, sewerage and sullage

All the issues in this section have been withdrawn because they are dealt with in Goods and Services Tax Ruling GSTR 2000/25 - *GST-free supplies of water, sewerage and sewerage-like services, storm water draining services and emptying of a septic tank.*

13 Partnerships and associated entities

13.1 Partnerships

13.1.1 - Partnership access to input tax credits

Question

Can a partnership have access to input tax credits without reimbursement of partners?

For the source of the ATO view, refer to paragraphs 110 to 113 of GSTR 2003/13 - *Goods and services tax: general law partnerships*.

Answer

Yes

Explanation

Refer to Paragraphs 110-113 of GSTR 2003/13 - *Goods and Services Tax Ruling - Goods and services tax: general law partnerships* for further information.

Question 1(a):

Does a taxable supply occur when a property is made available by one family member to another to operate as a farming business; for example, by a parent (landowner) to a partnership of son and daughter-in-law (operating entity). This arrangement involves the operating entity paying all the costs associated with holding the property (such as rates and taxes) in lieu of paying rent to the landowner?

For the source of the ATO view refer to:

- MT 2006/1 - *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*
- TR 97/11 - *Income tax: am I carrying on a business of primary production?*

Answer:

If all the requirements of section 9-5 of *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) are met, there will be a taxable supply.

Explanation:

Section 9-5 of the GST Act provides that you make a taxable supply if:

- You make a supply for consideration; and
- The supply is made in the course or furtherance of an enterprise that you carry on; and
- The supply is connected with Australia; and
- You are registered or required to be registered.

However, the supply is not a taxable supply to the extent that is GST-free or input taxed.

Enterprise

The issue to be is addressed is whether or not the landowner is renting out the property in the course or furtherance of an enterprise.

Section 9-20 of the GST Act looks at the definition of an enterprise and includes an activity or series of activities done on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property. However, it does not include anything done by an individual or partnership where all or most of the members are individuals without a reasonable expectation of profit or gain.

If the landowner is only being reimbursed for the costs of running the property, it is unlikely that there is any reasonable expectation of profit or gain; however, each case will need to be determined on the specific facts.

There are more comprehensive guidelines on the ATO view of what constitutes the carrying on of an enterprise in also gives valuable guidance on whether or not a business (of primary production) is being carried on.

Connection with Australia

If the land is in Australia the requirements of paragraph 9-5(c) of the GST Act will be satisfied.

Registration

Division 23 of the GST Act deals with registration.

Section 23-5 of the GST Act provides that you are required to be registered if:

- you are carrying on an enterprise; and
- your GST turnover meets the registration turnover threshold.

The turnover threshold (unless you are a non-profit body) is $75,000. Under section 23-10 you may also register if you are carrying on an enterprise or intend to do so whether or not your turnover is at, above or below the registration turnover threshold.

Consideration

The issue to be considered is whether the operating entity is providing consideration when it pays the running costs of the property.

Subsection 9-15(1) of the GST Act provides that:

(1) Consideration includes:

- any payment, or any act or forbearance, in connection with a supply of anything; and
- any payment, or any act or forbearance, in response to or for the inducement of a supply of anything.

In this context, the payment of rates and other statutory charges represent something of value that the operating entity is making to the landowner in return for the right to farm the land. This meets the criterion for consideration.

If the consideration (payment of rates and taxes) reflects the market value of the supply then the normal GST rules will apply. However, if the consideration does not reflect the market value of the supply, the application of Division 72 of the GST Act will need to be considered.

Division 72 ensures that supplies to, and acquisitions from your associates for inadequate consideration are properly valued for GST purposes. Associate is a defined terms for the purposes of the GST Act and has the meaning given by section 318 of the Income Tax Assessment Act 1936. The definition includes 'a relative of the primary entity'.

Question 1(b)

If the rates and taxes exceed $75,000 per annum, will this make any difference to the outcome?

Answer:

Where an enterprise is being conducted and the rates and taxes exceed $75 000 then the landowner will be required to register for GST as the GST turnover meets the registration turnover threshold requirements. The requirement to register will be subject to the property owner carrying on an enterprise, as previously explained.

Question 2:

Where the amount payable is less than $75,000 would the landowner require an ABN to avoid the operating entity withholding 46.5% of the rates for PAYG withholding?

Does not relate to an indirect tax specific issue

Answer:

To determine if the 'No ABN' provisions will apply in the scenario provided, the specific circumstances surrounding the case are essential. In the absence of these specific facts, general advice can be provided as to the application of the 'No ABN' withholding provisions.

Generally, the 'No ABN withholding' provisions are intended to cover transactions where both the payer and the payee are carrying on an enterprise. The payer will generally be required to withhold an amount from the payment if the payee fails to quote their ABN and none of the other exceptions applies:

The **other exceptions** include:

- the payee has made the supply to the payer through an agent, and the agent's ABN is quoted to the payer before payment is made;
- the payment (excluding GST) does not exceed $75;
- the supply is wholly input taxed.

If, for example, the landowner is not carrying on an enterprise, on the basis that there is no reasonable expectation of profit or gain, the payer would not be required to withhold any amount from the payment to reimburse the landowner for rates and taxes. The landowner, however, may need to complete a 'statement by a supplier' form.

13.2.2 - Transactions between entities

Question 1:

Does a taxable supply occur when a Primary Production business, formerly operated by a partnership and now operated by a trust, pays a hire fee to the partnership for use of plant. The original partnership is still in existence but its only 'activity' is the ownership of the plant that is used by the trust. The hire fee is usually equal to tax depreciation relating to assets owned by the partnership?

Non-interpretative – other references:

MT 2006/1 - *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*

TR 97/11 - *Income tax: am I carrying on a business of primary production?*

Answer:

If all the requirements of section 9-5 of *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) are met, there will be a taxable supply by the partnership.

Explanation:

Section 9-5 of the GST Act provides that you make a taxable supply if:

- You make a supply for consideration; and
- The supply is made in the course or furtherance of an enterprise that you carry on; and
- The supply is connected with Australia; and
- You are registered or required to be registered.

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

Enterprise

The issue to be considered is whether or not the partnership is hiring out the equipment in the course or furtherance of an enterprise.

Section 9-20 of the GST Act looks at the definition of an enterprise and includes an activity or series of activities done on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property. However, it does not include anything done by an individual or partnership where all or most of the members are individuals, without a reasonable expectation of profit or gain.

If the partnership is being paid an amount equal to the depreciation amount it is possible that there may be an expectation of profit or gain. If this is the case, the partnership may be carrying on an enterprise. However, each case will need to be determined on the specific facts.

There are more comprehensive guidelines on the ATO view of what constitutes the carrying on of an enterprise in .

Taxation Ruling 97/11 also give valuable guidance on whether or not a business (of primary production) is being carried on.

Connection with Australia

As the equipment is made available in Australia, the requirements of paragraph 9-5(c) will be satisfied.

Registration

Division 23 of the GST Act deals with registration. Section 23-5 of the GST Act provides that you are required to be registered if:

- you are carrying on an enterprise; and
- your GST turnover meets the registration turnover threshold.

The turnover threshold (unless you are a non-profit body) is $75 000. Under section 23-10 you may also register if you are carrying on an enterprise or intend to do so whether or not your turnover is at, above or below the registration turnover threshold.

Consideration

The payment of the hire fee for the use of the equipment will represent consideration for the supply. If the consideration reflects the market value of the supply then the normal GST rules will apply. If the consideration does not reflect the market value of the supply and the partnership and trust are associates, Division 72 of the GST Act will need to be considered.

Division 72 ensures that supplies to and acquisitions from your associates for inadequate consideration are properly valued for GST purposes. Associate is a defined term for the purposes of the GST Act and has the meaning given by section 318 of the *Income Tax Assessment Act 1936* (ITAA). Subsection 318(4) of the ITAA deals with associates of partnerships.

Section 72-70 of the GST Act provides that if a supply to your associate is for consideration that is less than the GST inclusive market value is a taxable supply; its value is the GST exclusive market value of the supply. It is important to note that Division 72 will not apply if the recipient is entitled to full input tax credits.

Question 2:

If the partnership has no ABN, does the no ABN withholding rule apply?

Answer:

Does not relate to an indirect tax specific issue

If the partnership is not carrying on an enterprise for profit or gain because the only income is from the hire of plant, which is an amount equal to the depreciation of the plant for tax purposes, there is no need for the trust to withhold 46.5% because an ABN is not quoted by the partnership. The partnership, however, may need to complete a 'statement by a supplier' form. A copy of this form can be obtained by referring to the online fact sheet - Statement by a supplier (reason for not quoting an ABN to an enterprise).

14 Non business use

14.1 Apportionment

14.1.1 - Correct basis for apportionment of expenses

Question

What is the correct basis for apportionment of expenses such as electricity and insurance?

Non-interpretative – other references (see - *Goods and services tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose*).

Answer

It may be the case that the apportionment method used to establish the 'private or domestic ' component of expenditure for income tax purposes will also be a fair and reasonable basis for apportioning input tax credits. For example, there are a range of methods commonly used to establish the 'business usage' of premises for income tax purposes that would usually satisfy the requirement to apportion input tax credits on a fair and reasonable basis.

Explanation

General principles of apportionment

The phrase 'to the extent' which appears in sections 11-15 and 15-10 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) is also found in section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) and section 51(1) of the *Income Tax Assessment Act 1936* (ITAA 1936). Under the income tax law, that phrase has been found to require an apportionment to be made in order to determine what part of a loss or outgoing is deductible. The Commissioner views the phrase 'to the extent' in the GST Act as incorporating the same apportionment concepts relevant to income tax (see GSTR 2006/4 paragraphs 36 and 50).

In addition, the Commissioner views the words 'private and domestic' as having essentially the same meaning as in the ITAA 1936 and ITAA 1997 (see GSTR 2006/4 paragraph 79).

The principle established by the High Court in *Ronpibon Tin NL v FCT (1949) 78 CLR 47* is to apportion on the basis of information regarding the actual application of the expenditure where it is possible to do so. If there are various expenses devoted to different purposes, an apportionment must be made on the basis of those purposes. On the other hand, if an expenditure is dedicated to different purposes an apportionment needs to be made on a 'fair and reasonable basis' - it is the latter that would seem to be appropriate for premises that are used for both business and private purposes (see *GSTR 2006/4* paragraphs 99-100).

Methods of apportioning input tax credits

The most appropriate method will depend on the circumstances of each case.

GSTR 2006/4 provides the following guidance:

> Methods can either be direct or indirect (paragraphs 104 - 120 GSTR 2006/4).

Direct methods

Direct methods are preferred because they give the most accurate measure of creditable purpose.

These methods use variables that are directly connected with the acquisition, for example, floor area used by the business. The relevant use is expressed as a percentage of the total use.

Example

Toby owns a small store selling posters, etc. The premises from which he runs the business also includes a flat where Toby lives. The total area of the premises is 60 square metres, with 40 square metres relating to the flat and 20 square metres relating to the shop. Toby incurs the following expenditure in relation to the premises (prices include GST):

Electricity	*$450*
Insurance (covering entire premises)	*$330*

Toby must apportion the input tax credits on those expenses that relate to both the shop and the flat as he cannot claim input tax credits for acquisitions of a private or domestic nature.

Electricity - this is a variable expense and floor area would not be an appropriate means by which to apportion as it bears no relation to the amount of energy actually used. Toby could use the number of hours worked in the shop to estimate the amount of electricity related to business usage. Based on business hours and the nature of appliances used, if Toby reasonably estimates that 40% of the electricity costs are attributable to his business activities, the calculation would be as follows:

$450 × 1/11 × 40% = $16.36

Insurance - this is a fixed occupation expense. A floor area basis would be appropriate to apportion this expense as it reasonably reflects the portion of the insurance cost relating to the shop area. The calculation would be as follows:

$330 ×1/11 × 20/60 = $10.00.

Indirect methods

An attempt is made to estimate the usage of acquisitions for creditable purposes. Variables that are not directly identifiable with the use of the particular acquisition are used. Although an accurate measure of the creditable use may not be known, these methods may provide a reasonable basis for the purpose of apportioning input tax credits.

There are two types of indirect methods, both of which work on the assumption that measures of input and output are an adequate estimate of the use of mixed use inputs for the making of various supplies:

- Input based methods
- Output based methods

For further details about methods of apportioning input tax credits, please refer to GSTR 2006/4 - *Goods and Services Tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose*.

Record keeping requirements

Records that relate to the calculation and apportionment of input tax credits must be kept. These must explain all relevant transactions and must be retained for at least 5 years after the completion of the transactions to which they relate (section 382-5 of Schedule 1 to the Taxation Administration Act 1953).

The Legislation

Relevant GST provisions: Division 11 of the GST Act.

Section 11-20 of the GST Act provides:

> You are entitled to the input tax credit for any creditable acquisition that you make.

Section 11-5 of the GST Act provides:

> You make a creditable acquisition if:
>
> (a) you acquire anything solely or partly for a creditable purpose; and
> (b) .....
> (c) .....
> (d) .....

Section 11-15 of the GST Act provides:

> (1) You acquire a thing for a creditable purpose to the extent that you acquire it in carrying on your enterprise.
>
> (2) However, you do not acquire the thing for a creditable purpose to the extent that:
>
> (a) the acquisition relates to making supplies that would be input taxed; or
>
> (b) the acquisition is of a private or domestic nature.

Section 11-30 of the GST Act provides:

> (1) An acquisition that you make is partly creditable if it is a creditable acquisition to which one or both of the following apply:
>
> (a) you make the acquisition only partly for a creditable purpose;
>
> (b) you provide, or are liable to provide, only part of the consideration for the acquisition.
>
> (2) Repealed
>
> (3) The amount of the input tax credit on an acquisition that you make that is partly creditable is as follows:
>
> Full input tax credit × Extent of creditable purpose × Extent of consideration
>
> (4) .....
>
> (5) The Commissioner may determine, in writing, one or more ways in which to work out, for the purpose of subsection (3), the extent to which a creditable acquisition is for a creditable purpose.

14.2 Reimbursement

14.2.1 - Employee reimbursement on an annual basis

Question

Is an entity registered for GST entitled to claim an input tax credit for motor vehicle expenses that are incurred by way of reimbursement to an employee, where the reimbursement is calculated on a cents per kilometre basis?

Non-interpretative – other references (see GSTB 2000/2 - *How to claim input tax credits for car expenses*).

Answer

No

Explanation

Division 111 of the A *New Tax System (Goods and Services Tax) Act 1999* allows you to claim input tax credits when you reimburse your employees, agents, officers or partners for any expenses they incur in connection with you carrying on your enterprise.

However, a reimbursement must be for an actual expense. Thus, if you undertake to pay a proportion of your employee's vouched car insurance expenses and all of the petrol dockets he produces, you may be entitled to claim an input tax credit. If you pay a car allowance to an employee that is not based on actual expenditure, even if it is calculated on actual mileage, this is not a reimbursement and no input tax credit can be claimed.

For further details please refer to GST Bulletin.

14.2.2 - Non-profit organisations claiming input tax credits

Question

How can a non-profit organisation, that is not an endorsed charity, a gift deductible entity or a government school claim input tax credits for reimbursing volunteers?

For the source of the ATO view, refer to the Charities Consultative Committee Resolved Issues.

Answer

Reimbursements to an organisation's employees, agents, partners and officers are not creditable acquisitions under Division 11 of the *A New Tax System (Goods and Services Tax) Act 1999* (the 'Act'), unless the relevant person is acting as an agent in making the acquisition. The organisation would therefore not be entitled to an input tax credit for such reimbursements.

In some situations the organisation may reimburse the expenses of a person that were not incurred by the person whilst acting as an agent. For example, if the person acting as agent acquires something for the organisation, that acquisition is effectively made by the organisation, and could therefore be a creditable acquisition.

However, if the person, on his or her own behalf, incurs, for example, petrol expenses, in making that acquisition, and the organisation reimburses him or her for those expenses, the organisation has not made an acquisition. The organisation would therefore not be entitled to an input tax credit in relation to such a reimbursement.

Division 111 of the Act covers an organisation's entitlement to claim input tax credits where it reimburses an employee, agent, officer, partner or volunteer of a charity for expenses they incur in connection with carrying on the organisation's enterprise.

Charitable institutions

Where an endorsed charity, a gift-deductible entity or a government school reimburses an individual for an expense he or she incurs that is directly related to their activities as a volunteer of that organisation, the organisation will be entitled to claim the input tax credits on these acquisitions.

To enable the organisation to claim the input tax credit, the volunteer will need to provide the organisation with the tax invoice for the acquisition they have made.

Organisations that are not charitable institutions

Where volunteers of organisations that are not endorsed charities, gift-deductible entities or government schools are reimbursed for expenses they incur in carrying out their activities as volunteers, the organisation will have no entitlement to claim the input tax credits. This will affect organisations such as sporting clubs and other non-profit organisations.

A non-profit organisation is entitled to an input tax credit where it makes a creditable acquisition. For example, an organisation may make a creditable acquisition where it purchases uniforms and provides the uniforms to its volunteers. However, the non-profit organisation would not be entitled to an input tax credit where it reimbursed the volunteer for cost of the uniform.

Note that if the organisation acquires something through an agent who was acting on its behalf in making the acquisition, the organisation is making that acquisition. The consideration an organisation pays through the agent for that acquisition is covered by the general rules about creditable acquisitions, not by Division 111.

For further information on the reimbursement of employees and volunteers and other related matters of The New Tax System is available in Part 9 of the Charities consultative committee resolved issues document.

14.3 Personal use

14.3.1 - Apportionment of Bulk Fuel Costs

Question

How does a farmer account for GST paid on bulk fuel if the fuel is used by more than one vehicle for both business and personal use?

Non-interpretative – other references (see - Goods and services tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose)

Answer

It may be the case that the apportionment method used to establish the 'private or domestic' component of expenditure for income tax purposes will also be a fair and reasonable basis for apportioning input tax credits. For example, there are a range of methods commonly used to establish the 'business usage' of a vehicle for income tax purposes that would usually satisfy the requirement to apportion input tax credits on a fair and reasonable basis.

Explanation

General principles of apportionment

The phrase 'to the extent' which appears in subsection 11-15(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) is also found in section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) and subsection 51(1) of the *Income Tax Assessment Act 1936 (ITAA 1936*). Under the income tax law, that phrase has been found to require an apportionment to be made in order to determine what part of a loss or outgoing is deductible. The Commissioner views the phrase 'to the extent' in the GST Act as incorporating the same apportionment concepts relevant to income tax law (see *GSTR 2006/4* paragraph 50).

In addition, the Commissioner views the words 'private or domestic nature' as having essentially the same meaning as in the ITAA 1936 and ITAA 1997, unless some specific provision of the GST Act indicates a contrary outcome in a particular case (see *GSTR 2006/4* paragraph 79-81).

The principle established by the High Court in *Ronpibon Tin NL v FCT (1949) 78 CLR 47* is to apportion on the basis of information regarding the actual application of the expenditure where it is possible to do so. If there are various expenses devoted to different purposes, then an apportionment must be made on the basis of those purposes. On the other hand, if an expenditure is dedicated to different purposes then an apportionment needs to be made on a 'fair and reasonable basis' – it is the latter that would seem to be appropriate for bulk fuel that is used for both business and private purposes (see principles in *GSTR 2006/4*).

Methods of apportioning input tax credits

The most appropriate method will depend on the circumstances of each case.

GSTR2006/4 provides the following guidance:

> Methods can be either **direct** or **indirect** (paragraphs 104-120 GSTR 2006/4).

Direct methods

Direct methods are preferred because they give the most accurate measure of creditable purpose.

These methods use variables that are directly connected with the acquisition, for example, kilometres travelled by a motor vehicle. The relevant use is expressed as a percentage of the total use.

Indirect methods

An attempt is made to estimate the usage of acquisitions for creditable purposes. Variables that are not directly identifiable with the use of the particular acquisition are used. Although an accurate measure of the creditable use may not be known, these methods may provide a reasonable basis for the purpose of apportioning input tax credits.

There are two types of indirect methods, both of which work on the assumption that measures of input and output are an adequate estimate of the use of mixed use inputs for the making of various supplies:

- Input based methods
- Output based methods

For further details about methods of apportioning input tax credits please refer to GSTR 2006/4.

Record keeping requirements

Records that relate to the calculation and apportionment of input tax credits must be kept. These must explain all relevant transactions and must be retained generally for five years after they are prepared, obtained or the transaction is completed,

whichever occurs latest (section 382-5 of Schedule 1 to the *Taxation Administration Act 1953*).

The Legislation

Relevant GST provisions: Division 11 of the GST Act

Section 11-20 of the GST Act provides:

> You are entitled to the input tax credit for any creditable acquisition that you make.

Section 11-5 provides:

> You make a creditable acquisition if:
>
> (a) you acquire anything solely or partly for a creditable purpose; and
>
> (b) .....
>
> (c) .....
>
> (d) .....

Section 11-15 provides:

> (1) You acquire a thing for a creditable purpose to the extent that you acquire it in carrying on your enterprise.
>
> (2) However, you do not acquire the thing for a creditable purpose to the extent that:
>
> (a) the acquisition relates to making supplies that would be input taxed; or
>
> (b) the acquisition is of a private or domestic nature.

Section 11-30 provides:

> (1) An acquisition that you make is partly creditable if it is a creditable acquisition to which one or both of the following apply:
>
> - you make the acquisition only partly for a creditable purpose;
> - you provide, or are liable to provide, only part of the consideration for the acquisition.
>
> (2) Repealed
>
> (3) The amount of the input tax credit on an acquisition that you make that is partly creditable is as follows:
>
> Full input Tax credit × Extent of creditable purpose × Extent of consideration

14.3.2 - Personal use or consumption by producer

This issue was withdrawn on the 30 August 2002

15 Registration

15.1 Registration

This question has been removed to issue 9 – Timber

For further information on Registration Issues please refer to the registration menu of GST essentials.

16 Farming

16.1 Carrying on

16.1.1 - Related entities conducting a farming business

Question

Is a land owner who allows a related entity to conduct a farm business on the land carrying on an enterprise for the purposes of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)?

This issue has been removed. Please refer to issues 13.2.1 and 13.2.2.

16.1.2 - Agistment

Question

Is the provision of agistment a farming business?

For the source of the ATO view refer to:

TR 97/11 - *Income tax: am I carrying on a business of primary production?*

MT 2006/1 - *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number.*

Answer

No, the provision of agistment is not a farming business as defined by Section 195 –1 and subsection 38-475(2) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). It may however, constitute an enterprise for the purposes of section 9-20 of the GST Act.

Explanation

Section 195 –1 of *the A New Tax System (Goods and Services Tax) Act 1999* (GST Act) provides that a farming business has the meaning given by subsection 38-475(2).

Subsection 38-475(2) of the GST Act provides the following:

> 'An entity carries on a farming business if it carries on a business of:
>
> 1. cultivating or propagating plants, fungi or their products or parts (including seeds, spores, bulbs and similar things), in any physical environment; or
> 2. maintaining animals for the purpose of selling them or their bodily produce (including natural increase); or
> 3. manufacturing dairy produce from raw material that the entity produced; or
> 4. planting or tending trees in a plantation or forest that are intended to be felled.'

An accepted definition of agistment is provided in *2 Halsbury's Laws (4th ed.)* paragraph 214, as:

> 'A contract of Agistment arises where one man, the agistor, takes another man's cattle, horses or other animals to graze on his land for reward, usually at a certain rate per week, on the implied term that he will redeliver them to the owner on demand.'

The ordinary usage of the term now extends to the provision of services such as grooming and veterinary care in addition to the grazing.

A common agistment arrangement is the granting, for reward, of the right to pasture animals, with or without shelter, on another's property. Where agistment is the main or only service provided, this will not constitute a farming business as defined in section 195 of the GST Act. Therefore, the provisions of subdivision 38-O of the GST Act which rely on the existence of a farming business will not apply to a business involving only agistment.

However, the provision of agistment may constitute the carrying on of an enterprise, as defined by section 9-20 of the GST Act. Further information on what constitutes the carrying on of an enterprise can be found in .

17 Going concerns

17.1 Going concerns

17.1.1 - Going concern and intent

Background

An entity intends to supply its enterprise (for example, fish trawling) as a going concern to a GST registered recipient. The supplier and recipient have agreed in writing that the supply is of a going concern. However, prior to the day of supply, an asset necessary for the continued operation of the enterprise (for example, the fishing vessel), is destroyed or severely damaged.

Question 1

Can the entity proceed and treat the supply as a supply of a going concern and therefore GST-free, on the basis there was originally an intention to supply everything necessary for the continued operation of the enterprise?

For the source of the ATO view, refer to general principles in GSTR 2002/5 - *Goods and services tax: when is a 'supply of a going concern' GST-free?*

Answer

It will not be the supply of a going concern.

Question 2

Can the entity proceed to supply its enterprise as a going concern if it is first able to remedy the loss of the asset, for example, by (a) leasing another boat, (b) repairing the damaged boat, or (c) purchasing another boat?

For the source of the ATO view refer to general principles in GSTR 2002/5 - *Goods and services tax: when is a 'supply of a going concern' GST-free?*

Answer

It can be the supply of a going concern but see explanation below.

Explanation

Subsection 38-325 (2) of *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) requires the identification of a particular enterprise that is being carried on by the supplier (the 'identified enterprise'). This is the enterprise for which the supplier must supply all of the things that are necessary for its continued operation. Also, the supplier must carry on this enterprise until the day of supply. These matters are explained in detail in which deals with the question 'when is a supply of a 'going concern' GST-free?'.

The term 'necessary' incorporates every attribute of an enterprise that is essential for the continued operation of the 'identified enterprise'. A 'thing' is necessary for the continued operation of an 'identified enterprise' if the enterprise could not be operated by the recipient in the absence of the thing.

The day of supply is the date on which the recipient assumes effective control and possession of the enterprise which is carried on by the supplier.

Question 1

In the situation where an asset, necessary for the continued operation of the enterprise, is destroyed prior to the day of supply, for example, the boat of a professional fisherman, the supplier can neither supply all things necessary nor carry on the enterprise, up to the day of supply. Consequently the supplier cannot meet all of the requirements of section 38-325 of the GST Act. The supply of the remaining assets of the enterprise will be a taxable supply provided the requirements of section 9-5 are met.

Question 2

If the identified enterprise can be supplied using a similar suitable asset, the supply can be GST-free.

For example, in the situation where the vendor has leased another suitable boat the supply of the enterprise will be GST-free if it includes the assignment of the lease of the boat, as well as all the other things that are necessary and the other requirements of section 38-325 are met viz.

- supply is for consideration
- recipient is registered or required to be registered
- supplier and recipient have agreed in writing that the supply is of a going concern
- supplier carries on the enterprise until the day of supply.

Similarly, if the damaged boat was repaired to allow it to be operational before the supply of the enterprise, or if another suitable boat was purchased prior to the supply, and all the other requirements are met, the supply will be GST-free as the supply of a going concern.

18 Wine equalisation tax

18.1.1

Question

Is there a rebate system for cellar door and mail order sales?

For the source of the ATO view refer to WETR 2009/2 - *Wine equalisation tax: operation of the producer rebate for other than New Zealand participants.*

Answer

There have been legislative changes to the wine equalisation tax (WET) wine producer rebate. For more about the changes to the WET rebate scheme refer to Wine equalisation tax on ato.gov.au.

This answer previously stated:

> Commonwealth and State Governments jointly fund a rebate scheme which effectively means that WET payable on cellar door and mail order sales and applications to own use up to and including $300,000 (wholesale value), annually, will be fully rebated.
>
> Wineries will be expected to pay the WET and GST to the ATO and then claim the WET rebate from the Commonwealth and State Governments. The Commonwealth rebate is claimed on the business activity statement and for sales up to $300,000 (wholesale value) is 14% of the taxable value used to calculate the WET on the cellar door and mail order retail sales and applications to own use.
>
> The Commonwealth rebate tapers to zero for retail sales and applications to own use with a wholesale value between $300,000 and $580,000, Retail sales and applications to own use with a wholesale value above $580,000 attract the 15% State subsidy alone.
>
> To qualify for the Commonwealth rebate an entity must:
>
> - be the producer of the wine, and
> - hold a producer's licence, a vigneron's licence or an equivalent licence, and
> - sell the wine from premises to which the licence relates.
>
> The Commonwealth rebate does not apply to:
>
> - wine sold in the course of providing food in a winery restaurant, or
> - wine sold by mail order or by way of the Internet where a commission is payable to a third party.

18.1.2

Question

What is the wine equalisation tax?

Non-interpretative – straight application of the law

Answer

The Wine Equalisation Tax (WET) is a value-based tax on wine. WET is payable on the last wholesale sale or on certain retail sales and applications to own use if no

wholesale transaction has occurred, for example cellar door sales by a winemaker or wine used for tastings.

The WET rate is 29%.

18.1.3

Question

To what beverages does the WET apply?

Non-interpretative – straight application of the law

Answer

The WET applies to the following alcoholic beverages provided they contain more than 1.15% by volume of ethyl alcohol:

- grape wine
- grape wine products
- fruit wines or vegetable wines
- cider or perry
- mead, and
- sake

For further explanation see WETR 2009/1 - *Wine equalisation tax: the operation of the wine equalisation tax system.*

18.1.4

Question

Who will pay the WET?

Non-interpretative – straight application of the law

Answer

The following persons usually have a WET liability and are required to collect and remit WET to either the Australian Taxation Office or Customs:

- wine manufacturers;
- wine wholesalers; and
- wine importers.

Generally, WET will be included in the price for which retailers (including bottle shops, hotels, restaurants and cafes) purchase the wine. The retailer is not entitled to an input tax credit for the WET. The WET forms part of the retailer's cost base and is passed on in the retail price of the wine to the end consumer. However, if retailers make their own wholesale sales of wine (that is, to a reseller) they may have a WET liability.

18.1.5

Question

How are exports of wine treated?

Non-interpretative – straight application of the law

Answer

Exports of wine which are GST-free supplies will not be subject to WET.

18.1.6

Question

How is the WET applied?

Non-interpretative – straight application of the law

Answer

The WET is levied at the wholesale level. The tax is paid on the value of the goods at the last wholesale sale, or on an equivalent value when there is no wholesale sale.

18.1.7

Question

What happens if I sell to a distributor who then sells to a retailer?

Non-interpretative – straight application of the law

Answer

A quotation system ensures WET is only paid on the last wholesale sale. The Australian Business Number (ABN) is used for WET quotation. In this case, the distributor should quote their ABN to the winery and the WET will then apply when the distributor sells to the retailer.

18.1.8

Question

Who administers the WET?

Non-interpretative – straight application of the law

Answer

The Australian Taxation Office administers and collects the WET for the Australian domestic market. Australian Customs service administers and collects the WET on imports.

18.1.9

Question

Do I need to register for the WET?

Non-interpretative – straight application of the law

Answer

There is no separate registration requirement for the WET. If you are required to be registered for the GST and you will have a WET liability, you will be asked to indicate this on the Australian Business Number (ABN) registration form.

At present the GST registration turnover threshold for GST is $75,000. If your GST turnover exceeds this amount you are required to be registered for GST and any assessable dealings you have with wine under the WET legislation will be taxable.

18.1.10 - Exemption

Question

Is there an exemption from WET based on my level of sales?

Non-interpretative – straight application of the law

Answer

An assessable dealing with wine will be subject to the WET if you are registered or are required to be registered for the GST. At present the GST registration turnover threshold is $75,000. If your GST turnover exceeds this amount you are required to be registered for GST and any assessable dealings you have with wine under the WET legislation will be taxable. Similarly, if your GST turnover is less than $75,000 but you are registered for GST any assessable dealings you have with wine will be subject to WET.

18.1.11

Question

How do I calculate the WET on my wholesale sales?

Non-interpretative – straight application of the law

Answer

The WET is charged at the rate of 29% on the price for which the wine is sold by wholesale before GST is imposed. For example wine is sold by wholesale for $1,000:

- the WET liability is $290 (29% of $1,000).
- the GST liability is $129 (10% of {$1,000 + $290}).
- the total charged for the wine is $1,419.

20 Sundry

20.1 Cash back payments

20.1.1 - Cash back payments

Question

What are the GST implications of a cash back payment offered by a supplier to a farmer?

Non-interpretative – straight application of the law

Answer

An adjustment note may need to be issued by the supplier to the farmer if the consideration for the taxable supply has changed.

Explanation

An example of a cash back payment arrangement is an early order programs used by farmers. In such programs the farmer orders products (for example, chemicals) from a supplier to be delivered approximately six months later. When the order is filled by the supplier and payment is received the farmer is entitled to a cash back payment.

The refund is a cash payment and is made during the current quarter or in the following quarter. For GST purposes this will be an adjustment event.

Adjustment events

Where a farmer has taken advantage of cash back discounts offered by a supplier of a kind described above, this will result in an adjustment event as the consideration paid by the supply has altered. You will need to hold an adjustment note (if the value of the purchase was over $75) from your supplier before completing your Business Activity Statement (BAS).

Subsection 19-10(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), provides an adjustment event is any event which has the effect of:

- cancelling a supply or acquisition; or
- changing the consideration for a supply or acquisition; or
- causing a supply or acquisition to become, or stop being, a taxable supply or creditable acquisition.

Adjustment notes

A document is an adjustment note if it satisfies subsection 29-75(1) of the GST Act, which provides:

> An adjustment note for an adjustment that arises from an adjustment event relating to a taxable supply:
>
> - must be issued by the supplier of the taxable supply in the circumstances set out in subsection (2); and
> - must set out the Australian Business Number (ABN) of the entity that issues it; and
> - must contain such other information as the Commissioner determines in writing; and
> - must be in the approved form.

However, the Commissioner may treat as an adjustment note a particular document that is not an adjustment note.

The supplier of the taxable supply, as provided in subsection 29-75(2) of the GST Act, must:

- within 28 days after the recipient of the supply requests the supplier to give an adjustment note for the adjustment relating to the supply; or
- if the supplier has issued a tax invoice in relation to the supply (or the recipient has requested one) and the supplier becomes aware of the adjustment before an adjustment note is requested - within 28 days after becoming aware of that fact;
- give to the recipient an adjustment note for the adjustment, unless any tax invoice relating to the supply would have been a recipient created tax invoice (in which case it must be issued by the recipient).

If the farmer receives:

- A cash back discount paid in a different tax period - the farmer will need to make an adjustment to his BAS in the period he received the discount. For the farmer to do this he would require an adjustment note from the supplier.
- A cash back discount in the same tax period - the farmer still requires an adjustment note reflecting the change in consideration, and to claim the correct reduced Input Tax Credit entitlement.

20.2 Education and food

20.2.1 - Boarding schools

Question

Is food supplied by boarding schools subject to GST?

Non-interpretative – other references (see GSTR 2000/30 - *Goods and services tax: supplies that are GST-free for pre-school, primary and secondary education courses*)

Please refer to - *Goods and services tax: supplies that are GST-free for pre-school, primary and secondary education*.

20.3 Penalties

20.3.1 - Late lodgment by tax agent - penalties where taxpayer at fault

Non-interpretative – straight application of the law

Question

Who is responsible for late lodgment penalties where a taxpayer lodges a GST return through a tax agent and the return is lodged late because the taxpayer did not get their records to the tax agent on time?

Answer

The taxpayer is liable for all penalties.

20.3.2 - Late lodgment by tax agent - penalties where tax agent at fault

Question

Who is responsible for late lodgment penalties where a taxpayer lodges a GST return through a tax agent and the return is lodged late due to the tax agent?

Non-interpretative – straight application of the law

Answer

For lodgments due on or after 1 March 2010 safe harbour provisions apply. Where you engage a registered agent you may not be liable for an administrative penalty for failing to lodge a document on time under certain circumstances.

For further explanation see:

- Safe harbour from Failure to lodge on time penalty on ato.gov.au, and
- PS LA 2011/19 - *Administration of penalties for failing to lodge documents on time.*

This answer previously stated:

> The taxpayer is liable for the late lodgment penalties but may sue the tax agent under common law or contract law.
>
> The GST Act does not specifically provide for the situation where a GST return is late due to the Tax Agent's error.
>
> Tax agents may be sued at common law or contract law for breach of contract or negligence. To successfully sue for damages, a taxpayer must prove that the agent's negligence caused it loss.

Explanation

Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) provides definitions of terms used in the GST Act.

It provides in the definition of 'you' that:-

> if a provision of this Act uses the expression you, it applies to entities generally, unless its application is expressly limited.

Division 31 of the GST Act deals with returns, payments and refunds.

> Section 31-10 of the GST Act provides that:
>
> (1) You must give your GST return for a tax period to the Commissioner:
>
> (a) on or before the 21st day of the month following the end of that tax period; or
>
> (b) within such further period as the Commissioner allows.

- (2) However, if the tax period ends during the first 7 days of a month, you must give the GST return to the Commissioner:

> (a) on or before the 21st day of that month; or
>
> (b) within such further period as the Commissioner allows.

Subdivision 286-C *of the Taxation Administration Act 1953 requires that:-*

Subdivision 286-C Penalties for failing to lodge documents on time

286-75 Liability to penalty

(1) You are liable to an administrative penalty if:

you are required under a taxation law to give a return, notice, statement or other document to the Commissioner in the approved form by a particular day; and

you do not give the return, notice, statement or document to the Commissioner in the approved form by that day.

(2) Subsection (1) does not apply to a return, notice, statement or other document under any of these Acts:

(a) *the Superannuation Contributions Tax (Assessment and Collection) Act 1997*;

(b) *the Superannuation Guarantee (Administration) Act 1992*; or

(c) *the Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991*.

286-80 Amount of penalty

(1) The amount of the penalty is worked out in this way:

(a) work out the base penalty amount under subsection (2); and

(b) work out whether the base penalty amount is increased under subsection (3) or (4).

(2) The base penalty amount for failing to lodge a return, notice or other document on time or in the approved form is one penalty unit for each period of 28 days or part of a period of 28 days starting on the day when the document is due and ending when you give it to the Commissioner (up to a maximum of five penalty units).

(3) The base penalty amount is multiplied by two if:

(a) the entity concerned is a medium withholder for the month in which the return, notice or other document was required to be given; or

(b) the entity's assessable income for the income year in which the return, notice or other document is required to be given is more than $1 million but less than $20 million; or

(c) the entity's current GST turnover worked out at a time in the month in which the return, notice or other document was required to be given is more than $1 million but less than $20 million.

(4) The base penalty amount is multiplied by five if:

(a) the entity concerned is a large withholder for the month when the return, notice or other document was required to be given; or

(b) the entity's assessable income for the income year in which the return, notice or other document is required to be given is $20 million or more; or

(c) the entity's current GST turnover worked out at a time in the month in which the return, notice or other document was required to be given is $20 million or more.

(5) In working out the base penalty amount, the amount of a penalty unit is the amount applying at the start of the relevant 28 day period.

(6) The fact that you have not yet lodged the relevant return, notice or other document does not prevent the Commissioner notifying you that you are liable to an administrative penalty under this Subdivision. That penalty may be later increased under this section.

Therefore, 'you', the entity which is registered for GST is required to give a GST return to the Commissioner by a specified date. If you fail to give the Commissioner a return on time, you will be liable to a penalty.

20.4 Food

20.4.1 - Dual purpose test for food

Question

Are products that can be consumed as 'food' but also have other uses, considered to be food?

For the source of the ATO view refer to Detailed food list.

Answer

Yes, if the supply of a product is food for human consumption as defined in Section 38-4 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

For further information please refer to Issue 1 of the Food industry partnership - issues register

Explanation

A supply of a product that is food for human consumption as defined in Section 38-4 of the Act is GST-free (provided that it is not excluded by another part of the food provisions). However, some GST-free food products have alternative non-food uses.

There is no requirement for the supplier to ascertain how the purchaser will use the product. The GST status of the product depends on whether it is a supply of food for human consumption as defined in the GST Act.

Example 1

> *Rice flour can be consumed as an ingredient for food (for example, added to bakery products) and satisfies the definition of food in paragraph 38-4(1)(b) of the GST Act. However, rice flour can also be used in the processing of aluminium. If rice flour that is supplied as an ingredient for food for human consumption is purchased by an aluminium processor, it remains GST-free. It does not matter that the purchaser intends to use the food product for purposes other than food for human consumption.*
>
> *However, a product with a GST-free food use will not retain its GST-free status if, in the course of its supply, the supplier differentiates it from the GST-free food product.*

Example 2

> *A butcher supplies soup bones for sale. Soup bones are 'ingredients for food for human consumption' pursuant to paragraph 38-4(1)(b) of the GST Act. If a customer purchases soup bones with the intention of feeding them to her dog, the status of the product supplied has not changed. The butcher has supplied food for human consumption that is GST-free. It does not matter that the customer will use the bones for an alternative use.*
>
> *If the butcher finds that soup bones are not selling well and re-labels them as 'pet food', the product has been differentiated by the supplier. When a supply of pet bones is made to a customer, it is not a supply of 'food for human consumption'. As a result the supply of pet bones is a taxable supply.*

To be GST-free under the food provisions of the Act, the product must be a supply of food for human consumption as defined in the Act. The mere fact that a product is edible is not sufficient for it to qualify as GST-free food.

Example 3

Saltco refines a batch of raw salt to cooking salt specifications. This batch complies with food standards. One portion of this batch is to be sold as cooking salt. Supplies of this product are supplies of an ingredient for food that is GST-free.

Saltco could have chosen to sell this entire batch of refined salt as cooking salt since it complies with food standards. However, the second portion of the batch is designated 'swimming pool salt'. As such, it no longer has to meet food standards or to be packaged and stored hygienically. Although the salt may be edible (and may also be stored to food grade standards), it is no longer a supply of an ingredient for food for human consumption. It is a supply of pool salt. A supply of pool salt is not a supply of food as defined in the Act and is therefore not GST-free.

It cannot be said that a supply of a product, which is indicated to be other than food, is a supply of food, even if it is identical in substance to the GST-free food product.

In determining whether a supply is a supply of GST-free food, it is not only the physical characteristics of the product that are important but also the nature of the supply.

Some of the ways in which a dual-purpose food product could be considered to be differentiated for non-food use are:

- *designation as something other than food*
- *pre-delivery storage in conditions or containers that are unsuitable for food*
- *packaging in a non-food type of package or container*
- *labelling, invoicing or marketing as a non-food product*
- *delivery in a manner unsuitable for food*

Example 4

Vinegar is processed to meet food standards. Part A of the batch is designated for supply as an ingredient for food. Part B of the batch is designated for supply as a household cleaner. Part A is placed in hygienic bottles with tamper-proof seals. The labels indicate use of the vinegar in food. A supply of this product is a GST-free supply of food for human consumption for the purposes of the Act.

Part B of the batch is placed in plastic containers that do not satisfy standards for supply of a food product. The Part B product is labelled as cleaning vinegar. The products have been differentiated by the manner of their packaging and labelling. A supply of cleaning vinegar is not a supply of food for human consumption as defined in the Act. Therefore the supply is a taxable supply.

Example 5

Flour to be supplied as an ingredient for food is stored in stainless steel silos that are fumigated in accordance with standards for the storage of food. The

flour is packed into hygienic paper bags. A supply of this product is a GST-free supply of food.

Flour milled to the same specifications, but to be supplied for use in manufacturing glue, is stored in sheds. It is fumigated with chemicals that render it unsuitable for use in food. It is delivered in bulk bins that are not subject to any hygiene standards. These products have been differentiated by the manner of their storage, packaging and delivery. In this case, a supply of the product for use in glue manufacture is not a supply of food for human consumption as defined in the Act. Therefore the supply is a taxable supply.

20.4.2 - Rotten fruit and vegetables

Question

How are rotten fruit and vegetables defined in relation to food?

Non-interpretative – straight application of the law

Answer

Under the definition of food, food that is unfit for human consumption is not considered food for human consumption and therefore not GST-free.

20.4.3 - Rotten grapes:

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 195*3 and can be found here.

20.5 Deposits

20.5.1 - Security deposits

Question

Where a commitment to purchase equipment is made and a security deposit is paid, when does the GST liability in relation to the sale arise? The agreement is that the deposit may be forfeited if the customer does not complete the purchase.

Non-interpretative – other references (see GSTR 2006/2 - *Goods and services tax: deposits held as security for the performance of an obligation*).

Answer

Upon the assumption that the deposit is not forfeited the GST liability arises when the deposit is applied as part of the consideration. This may be at the time of delivery. However, if the deposit is forfeited GST arises in relation to the deposit at the time of forfeiture. A relevant example is contained in Taxation Determination *GSTD 2000/1 Goods and Services Tax: is the scope of Division 99 of the A New Tax System (Goods and Services Tax) Act 1999 limited to holding deposits?*

Explanation

Division 99 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) provides a special rule about attribution for security deposits.

Goods and Services Tax Ruling GSTR 2006/2 - *Goods and services tax: deposits held as security for the performance of an obligation* provides additional information.

The issue of security deposits and land sales is discussed further at issue 6.2.12.

20.6 In kind

20.6.1 - Payment in kind

Question

Do payments in kind represent two supplies in the following situation?

Taxpayer 1 grows a grain crop on Taxpayer 2's property. In return for the use of Taxpayer 2's property, Taxpayer 1 gives him a percentage of his grain crop which Taxpayer 2 sells at a later date. Both taxpayers are registered for GST.

For the source of the ATO view refer to general principles in - *Goods and services tax: non-monetary consideration*.

Answer

The grain and the right to use the property represent two taxable supplies. The consideration of each supply is the value of the other supply.

Explanation

Section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) provides:

> You make a taxable supply if:
>
> (a) you make the supply for consideration; and
>
> (b) the supply is made in the course or furtherance of an enterprise that you carry on; and
>
> (c) the supply is connected with the indirect tax zone; and
>
> (d) you are registered, or required to be registered.
>
> However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

Supply

The definition of supply as provided in section 9-10 of the GST Act is very broad and includes the supply of goods, services and the grant of a right by a business.

The provision of grain and the right to use the property would fall within this definition, because a thing that forms non-monetary consideration is itself a supply made for consideration (see GSTR 2001/6 paragraph 16).

Most transactions involve one entity supplying an item with the other entity supplying the money or digital currency. However section 9-10(4) of the GST Act specifically excludes money or digital currency from the definition of a supply. Section 9-10(4) of the GST Act states:

> However, a supply does not include a supply of money or digital currency unless the money or digital currency is provided as consideration for a supply that is a supply of money or digital currency.

If money or digital currency was not specifically excluded from the definition of supply, it could satisfy the definition of a taxable supply and be subject to GST.

Consideration

A taxable supply must be for consideration which includes everything that the supplier has received for the goods and services. Section 9-15 of the GST Act states that it includes any payment, act or forbearance done in connection with the supply of the thing.

Payment is not restricted to payments of money or digital currency. It includes 'in kind' payments, that is, payments made otherwise than in money or digital currency (see GSTR 2001/6 paragraph 12).

Therefore, the payment of the grain will be the consideration for the right to use of the property. The right to use the property will be the consideration for the supply of grain.

Provided section 9-5 of the GST Act is satisfied, each of the supplies in kind will be taxable supplies.

Liability for GST and entitlement to input tax credits

Each taxpayer will be required to account for GST on the taxable supplies they make and will be entitled to claim input tax credits on creditable acquisitions.

Taxpayer 1 makes a taxable supply of grain and a creditable acquisition of the use of the property on which to grow the crop.

Taxpayer 2 makes a taxable supply of the right to use the property and a creditable acquisition of grain. The later sale of the grain will also be a taxable supply.

Both parties will need to include these taxable supplies and creditable acquisitions on their Business Activity Statement (BAS) in the normal way.

Where both supplies are taxable supplies, each party will be liable to GST on the supply it makes. The amount of GST is based on the GST inclusive market value of the consideration, which is the market value of the consideration without any discount for GST payable on the other supply. Where there is an arm's length transaction between the parties, the value of each consideration will be the same unless the things swapped as part of the transaction have an unequal market value. No net GST will be payable where the consideration for the relevant supplies are made in the same tax period and have the same GST inclusive market value.

For further details please refer to .

20.7 Prizes

20.7.1 - Prize money

Question

What are the GST implications for payment of prize money by agricultural show societies?

For the source of the ATO view refer to general principles in GSTR 2002/3 - *Goods and services tax: prizes*

Answer

If the recipient of the prize money is registered for GST, they would make a taxable supply (for example, exhibiting their animal) for which the prize money is consideration.

Explanation

There are two supplies to be considered, that is, both the agricultural show society ('the society') and the participants make supplies to each other.

Each participant pays an entry fee for the right to enter the competition. As the society is registered for GST it would be making a taxable supply. The entry fee will include GST which must be remitted to the Australian Taxation Office by the society.

It is considered that the exhibiting of the animal is a supply of services. The prize money is provided by the society as consideration for this supply.

The supply of services by the participant will be a taxable supply where:

- the supply is made for consideration (that is, the participant receives a prize for providing the service);
- the supply is made in the course or furtherance of an enterprise (this would have to be an enterprise carried on by the participant);
- the supply is connected with Australia (where the competition takes place in Australia, the supply will be connected with Australia); and
- the participant is registered or required to be registered (a person engaging in a hobby or recreational pursuit is not carrying on an enterprise in relation to that activity and will, therefore, not be entitled to be registered in relation to that hobby or recreational pursuit).

The participants provide services to the society (for example, exhibiting their animal). Whether the supply is a taxable supply will depend on whether the participant is registered for GST and whether the supply is made in the course or furtherance of an enterprise. It is the supply of services by the participant for which consideration (the prize money) is received.

If the supply of services is a taxable supply, the prizewinner will become liable for GST in relation to the consideration received for the supply. The consideration for the supply is the prize, and the price of the supply is determined in accordance with section 9-75 of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act).

GST consequences of the competition for the show society and winners

- Where the recipient of the prize is registered for GST, it is considered that a taxable supply has been made for which the prize money is the consideration. The recipient will have a GST liability of 1/11th of the consideration. Prize winner will be required to issue the society with a tax invoice if requested by the society, unless the society is entitled to issue a recipient created tax invoice.

The society would have made a creditable acquisition and may be entitled to claim input tax credits which would be equal to the GST component of the prize money.

- Where the recipient of the prize is not registered for GST, there are no GST consequences as a supply has been made, but not a taxable supply.

The society would not have made a creditable acquisition and therefore would not be entitled to input tax credits.

Note:

A cash prize, as discussed above, is consideration for a service provided by the participant. In itself it cannot be a supply by a society as subsection 9-10(4) of the GST Act prevents this as follows:

> 'A supply does not include a supply of money or digital currency unless the money or digital currency is provided as consideration for a supply that is a supply of money or digital currency'.

20.8 Employees

20.8.1 - Food and accommodation supplied to jackaroos, jillaroos, station hands and their associates.

Question

Does GST apply on supplies by employers to jackaroos, jillaroos, station hands and similar employees, of:

- **food and drink, or**
- **accommodation?**

For the source of the ATO view refer to general principles in

- GSTR 2001/3 – *Goods and Services Tax: GST and how it applies to supplies of fringe benefits* and
- GSTR 2012/6 – *Goods and Services Tax: commercial residential premises*

Answer

GST will apply where an employer is registered or required to be registered for GST and makes a supply of food or drink ('meals') to a jackaroo, jillaroo, station hand and similar employees (to be referred to as 'station hands' from herein), for consumption on the premises, and the station hand makes a payment for the supply. The GST is one-eleventh (1/11th) of the payment made.

Accommodation typically provided to station hands during their term of employment will be non-commercial residential accommodation and accordingly input taxed. This means that GST will not apply to the supply of such accommodation, nor will input tax credits be available for expenses related to supplying the input taxed accommodation.

Explanation

Section 9-5 of A New Tax System (Goods and Services Tax) Act 1999 (GST Act) provides, broadly, that a supply is a taxable supply if it is for consideration, in the course of the employer's business, connected with Australia, and the employer is registered or required to be registered for GST. However, it is not a taxable supply to the extent it is GST-free or input taxed.

Meals

Although the supply of food for human consumption is GST-free in many circumstances, it is not GST-free if it is food for consumption on the premises from which it is supplied (paragraph 38-3(1)(a) of the GST Act). Food includes beverages.

Station hands may be provided with meals in a kitchen or dining room, either formal or informal, or in the open air. Because the supply is intended for consumption at the place where it is provided, it is not GST-free.

Employers will not always require a monetary payment for meals, as a station hand may be entitled to meals as a condition of employment (for example, an industrial award) or the employer may, as a matter of policy, provide meals free of charge. Some employers will provide the meals at only a nominal charge. Other employers will seek to recover the cost of meals at a full commercial rate.

The definition of supply in the GST Act is broad and includes the supply by an employer to an employee of a fringe benefit (including an exempt fringe benefit). Subsection 9-75(3) of the GST Act provides a special method for calculating the taxable value of such a supply. To determine the taxable value, it is necessary to examine the definition of 'recipients contribution' in the *Fringe Benefits Tax Assessment Act 1986*. Paragraph (a) of that definition refers to 'consideration paid'.

It follows that a supply of meals to a station hand has a GST inclusive price equal to the amount, if any, paid by the station hand for the meals. (Note that the work the employee performs is an indirect form of consideration, and is not 'consideration paid' for the purpose of ascertaining the amount of GST on the fringe benefit. This is discussed at paragraphs 18 to 20 of *Goods and Services Tax Ruling GSTR 2001/3 Goods and services tax: GST and how it applies to supplies of fringe benefits*.)

Under the provisions of subparagraph 9-75(3)(a)(ii) of the GST Act, the GST inclusive price of the supply of the meals will be the amount the station hand pays for the meals. Hence a GST registered employer will be liable to remit GST of one-eleventh (1/11th) of what the station hand pays for the meals.

The employer will also be able to claim input tax credits in the usual way for creditable acquisitions that have a connection with the supplying of the meals, in the course of the employer's enterprise. It does not matter if the employer does not make a monetary charge for the meals supplied to the station hand, or charges only a nominal amount.

Note that the GST Act contains a special provision, section 72-70 of the GST Act, for supplies made to family members and other associates for less than market value. It is considered that this provision has no application in relation to the supply of meals to a station hand who is an associate, provided that the employer treats the associate the same in relation to the supply of meals, as they would an unrelated employee.

Accommodation

Goods and Services Tax Ruling GSTR 2012/6 Goods and Services Tax: commercial residential premises, discusses the question of whether accommodation should or should not be regarded as accommodation of residential premises. In particular, paragraph 124 of GSTR 2012/6 states:

> Paragraph 37 of *Goods and Services Tax Ruling GSTR 2000/20* sets out the former view that accommodation provided by an employer in premises controlled by them or their associate is usually residential premises. However, paragraph 39 of GSTR 2000/20 modified this general position in providing that short-term accommodation provided by an employer in specific circumstances was not a supply of residential premises, nor accommodation provided in commercial residential premises. A supply of this type of accommodation was considered to be subject to the basic rules. This view is not

replicated in this Ruling. Under the views set out in this Ruling, a supply of accommodation made to an employee or contractor may be an input taxed supply by way of lease, hire or licence of residential premises to be used predominantly for residential accommodation or a taxable supply of accommodation in commercial residential premises depending upon the circumstances.

The supply of accommodation to station hands is typically in the nature of residential accommodation. The question then arises under section 40-35 of the GST Act whether it is 'commercial'. The GST Act definition of 'commercial residential premises' includes a hotel, motel, inn, hostel or boarding house. Persons running such establishments may need to apply the special provisions that relate to the supply of long-term commercial accommodation. However, GSTR 2012/6 discusses what characteristics give the commercial character. In particular, these characteristics are identified at paragraph 150 of GSTR 2012/6 as follows:

The main characteristics are:

- Commercial intention
- Multiple occupancy
- Holding out to the public
- Accommodation is the main purpose
- Central management
- Management offers accommodation in its own right
- Provision of, or arrangement for, services
- Occupants have status as guests.

These characteristics are typically lacking where accommodation is provided to a station hand. Rather the accommodation is for the purpose of providing the station hand with a place to stay, in connection with their employment. It is considered that the accommodation supplied to station hands will generally be input taxed as it will be the supply of residential premises that are not commercial residential premises. The employer will have no GST liability on a supply by lease, hire or license of such premises to a station hand.

The accommodation is being supplied to the station hand because of the employment of the station hand, and it will generally be part of the enterprise of the employer to supply that accommodation (whether or not the employer requires any, a partial, or a full monetary payment).

The question arises whether the employer is entitled to claim input tax credits. Section 11-5 of the GST Act provides that an acquisition is not for a creditable purpose to the extent that the acquisition relates to making supplies that would be input taxed. Therefore, a GST registered employer providing non-commercial, residential accommodation to a station hand will need to ensure that input tax credits are not claimed in the employer's Business Activity Statement, to the extent that the employer's acquisitions relate to making supplies of accommodation that would be input taxed.

Example - meals and accommodation supplied to station hands

Two station hands are engaged as full-time employees under the Pastoral Industry Award 1998. One employee chooses to live with relatives nearby. This employee is paid at the 'without keep' rate of pay. By agreement, this employee pays the employer, a GST registered entity, $55 a week towards food and drink the employer provides for consumption on the premises each week. The amount of GST the employer is liable to remit in relation to this employee is $5 a week (being one-

eleventh of the amount the employee pays for his meals). However, this will be offset by any input tax credits to which the employer may be entitled (for example, GST included in the price the employer pays for electricity used to cook the meals).

The other station hand is employed on a 'with keep' basis under the Award, entitling this employee to 'good and sufficient rations of sufficient quantity, sound, well-cooked and properly served'; as well as 'good and sufficient living accommodation'. This employee resides in a small cottage adjacent to the station homestead and takes his meals in the homestead. The rate of pay prescribed in the Award for 'with keep' employment is lower than for 'without keep' employment. However, for GST purposes in calculating the GST on fringe benefits, the amount of 'consideration paid' in this situation will be nil as all the employee does is perform his normal duties - no separate payment is made by the employee. Hence the amount the employer is liable to remit in respect of this employee in relation to the meals is nil. The employer may nonetheless be entitled to input tax credits on creditable acquisitions (for example, electricity used to cook this employee's meals).

The accommodation supplied (the cottage) does not exhibit the characteristics of commercial residential premises. It qualifies under the GST Act as non-commercial residential accommodation and will be input taxed. This means the employer has no GST liability in supplying the accommodation to the station hand. However, it also means that the employer is not entitled to GST input tax credits on acquisitions, to the extent they relate to the supply of the accommodation to the station hand (for example, electricity for the cottage).

20.9 Financial arrangements

20.9.1 - Commodity derivatives agreement

The content for this issue is a public ruling for the purposes of the *Taxation Administration Act 1953* and can be found here.

20.9.2 - Hire purchase and GST

Question

When will entitlement to an input tax credit arise for a hire purchaser?

For the source of the ATO view refer to GSTR 2000/29 - *Goods and services tax: attributing GST payable, input tax credits and adjustments and particular attribution rules made under section 29-25*

The hire purchaser will be liable to pay GST on goods acquired under a hire purchase agreement where the supply of the goods is a taxable supply. Where the hire purchasers are registered for GST, and the goods are for use in their business, they may be able to claim an input tax credit for any GST paid on the purchase of the goods. However when entitlement arises is dependent on how GST is accounted for:

For hire purchase agreements entered into before 1 July 2012:

Cash basis

If the hire purchaser accounts for GST on a cash basis and the item purchased is a creditable acquisition, the hire purchaser is entitled to an input tax credit on the principal component in a tax period, but only to the extent of payment made.

Non-cash basis

Where the hire purchaser accounts for GST on a non-cash basis and the item purchased is a creditable acquisition, the hire purchaser is entitled to the entire input tax credit on the principal, in the tax period in which the invoice is received or in which any payment is made, whichever is earlier, subject to the usual requirements to hold a tax invoice.

Example

Bridget owns the Bay Venture, a fishing boat, and requires a freezer to store part of the Bay Venture's catch. Bridget is registered for the goods and services tax (GST) and accounts on a cash basis. Bridget purchases a freezer from Patrick's Freezer Store for $33 000 through a hire purchase agreement. The agreement is made and the freezer delivered on the 24 April 2001 with a tax invoice. Under the terms of the agreement the interest charge is separately disclosed, and Bridget will repay $670 per month ($550 principal and $120 interest) for five years. The total payment will be $40 200 ($33 000 plus $7,200 interest).

As Bridget accounts for GST on a cash basis, she is only entitled to claim an input tax credit of $50 (1/11th of $550) for each instalment in the period she actually makes the payments.

Bridget cannot claim an input tax credit for the interest component ($120). This is because the interest is for a financial supply and is input taxed.

If Bridget were registered for GST on a non-cash basis, she would attribute the claim to the tax period in which the invoice is received or in which any payment is made. So, for the tax period ending 30 June 2001, she would claim an input tax credit of $3,000 (1/11th of the $33,000).

Bridget has divided her monthly payments into components of principal and interest using the same methodology as she uses for income tax purposes.

For hire purchase agreements entered into on or after 1 July 2012:

All components of the supply under these agreements are taxable regardless of whether the credit component is separately disclosed.

Cash basis

If the hire purchaser accounts for GST on a cash basis and the item purchased is a creditable acquisition, the hire purchaser is entitled to claim input tax credit on both the principal and the credit component in a tax period, as if they are accounting for GST on a non-cash basis.

Non-cash basis

Where the hire purchaser accounts for GST on a non-cash basis and the item purchased is a creditable acquisition, the hire purchaser is entitled to the entire input tax credit on both the principal and the credit component, in the tax period in which the invoice is received or in which any payment is made, whichever is earlier, subject to the usual requirements to hold a tax invoice.

More information

See the Fact Sheet Hire purchase, leasing and GST (NAT 3491) for more details.

Goods and Services Tax Ruling GSTR 2000/29 provides further information on hire purchase and the attribution of GST.

Footnotes

1 See the definition of derivative under section 196-1.01 of the Regulation.

2 For GST purposes futures contract is a derivative, the value of which is derived from the underlying asset. See Schedule 2, Clause 10, item 1 which provides examples for derivatives mentioned in the table in the section 40-5.09 of the Regulations.

3 At law, futures contracts are an executory contract.

4 Under section 195 of the GST Act, invoice means a document notifying an obligation to make payment. Paragraph 30 of GSTR 2000/34 states that a contract is capable of being an invoice where it creates an obligation to make payment, and that the obligation is a presently existing one. A Futures contract does not have a presently existing obligation.

5 See Note 3 under section Regulation 40-5.12. Under section 29-25 the Commissioner may determine particular attribution rules.

6 Schedule 2, Clause 10, item 7 in the examples for derivatives mentioned in the table in section 40-5.09 of the Regulations notes that cash settlement results in a financial supply.

20.10 ATO Rulings

20.10.1 – Class rulings

Question

Can an industry organisation request a GST class ruling on behalf of its members?

Non-interpretative – straight application of the law.

Answer

Yes. From 1 July 2010, we will issue class rulings on indirect tax matters.

Explanation

Previously the class ruling system did not apply to the *A New Tax System (Goods and Services Tax) Act 1999*. However, from 1 July 2010 the general rulings system includes excise, GST and other indirect taxes. Therefore, we can issue a class ruling under Division 358 of Schedule 1 to the *Taxation Administration Act 1953*.